

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-2095

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

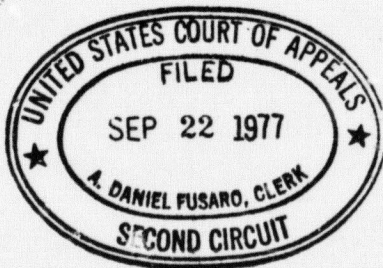
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:
LOUISE TODARO, ERNESTINE DAVIS, DEIDRA PLAIR,
PHYLLIS KLIPPEL, SYLVIA DAVIS, CLEO BACON, IRIS
CAPELLA, NAOMI BOSTICK, MARY REED, ALICE TAVER,
CAROL LEWIN, TAMMY GOLSTON, MARGARET GATLING, TONYA
JACKSON, TRACYE CRAIG, BEVERLY MASSEY, CARMEN
GARCIA, HELEN LaVORE, GLORIA TAGGART, MARTA HARDEE,
ALTHEA McDANIEL, RUTH DOBSON, MADELINE PINEDA, JUDY
WHEAT, BERNADETTE BROWN, and EVELYN THORPE, on
behalf of themselves and all other persons similarly
situated,

Plaintiffs-Appellees

-against-

BENJAMIN WARD, Commissioner of the New York State
Department of Correctional Services; IAN LOUDON,
Assistant Commissioner for Health Services of the
New York State Department of Correctional Services;
DAVID FROST, Southern Regional Director of Health
Services of the New York State Department of
Correctional Services; JANICE WARNE, Superintendent
of Bedford Hills Correctional Facility; HENRY
WILLIAMS, Health Services Director of Bedford Hills
Correctional Facility; ROBERT TSCHORN, Surgical
Consultant at Bedford Hills Correctional Facility;
and MARIE DALY, Nurse Administrator at Bedford Hills
Correctional Facility, individually and in their
official capacities,

Defendants-Appellants.



JOINT APPENDIX

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P/S

: #77-2095

PAGINATION AS IN ORIGINAL COPY

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JUDGE WARD

72A 27 4535

TITLE OF CASE		ATTORNEYS			
LOUISE TODARO, ERNESTINE DAVIS, EDRA PLAIR, PHYLIS KLIPPEL, SYLVIA RYAN, CAROL WOOD, PAUL CAPELLA, NAOMI BOSTICE, LARRY REED, ANN E. LANE, CAROL LEWIN, TANNY GELSON, EUGENIE GARCIA, TOMIA JACKSON, TRACY CRAIG, EUGENIE GARCIA, CARMEN GARCIA, HELEN LAVORE, GLORIA LAGUNA, MARIA HARDEE, ALTHEA McDAWIEL, ROSE DUBOIS, MADELINE PINEDA, JUDY MEAT, EUGENIE GARCIA, and EVELYN THORPE, on behalf of themselves and all other persons similarly situated. -v- PETER PREISER, Commissioner of the New York State Department of Correctional Services; IAN LOUDON, Assistant Commissioner for Health Services of the New York State Department of Correctional Services; DAVID FROST, Southern Regional Director of Health Services of the New York State Department of Correctional Services; JANICE WARNE, Superintendent of Bedford Hills Correctional Facility; HENRY WILLIAMS, Health Services Director of Bedford Hills Correctional Facility; ROBERT TSCHORN, Surgical Consultant at Bedford Hills Correctional Facility; and MARIE DALY, Nurse Administrator at Bedford Hills Correctional Facility, individually and in their official capacities,		For plaintiff: William E. Hellerstein, Legal Aid Society 15 Park Row, N.Y.C. 10038 374-1737 8/2 For defendant: Louis J. Lefkowitz Atty. Gen. Two World Trade Center, NYC 10047 488 7657			
STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed	Clerk		IFF		
J.S. 6 mailed	Marshal				
Basis of Action:	Docket fee				
Civil Rights Action	Witness fees				
Action arose at:	Depositions				

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DATE	PROCEEDINGS	Date Order or Judgment Noted
Oct 18, 74	Filed complaint and issued summons.	
Oct 18, 74	Filed Pltffs'. affidavit and notice of motion for an order granting leave to proceed with this action without prepayment of fees or costs.	
Oct 18, 74	Filed ORDER permitting Pltffs. to proceed in forma pauperis, without prepayment of fees or costs. Olack, J.	
Dec 3, 74	Filed Summons & marshals ret. Served: Peter Preiser Comm. on 11/1/74 Ian Loudon, Asst. Comm. for Health Services on 11/1/74 David Frost, Sr. Regional Director of Health Services on 11/25/74 Janice Warne, Supt. on 10/21/74 Henry Williams Fac. Health Services Director on 10/21/74 Robert Tschorn, M.D. on 11/7/74 Robert Tschorn, Surgical Consultant on 10/21/74 Marie Daly, Nurse Administrator on 10/21/74	
Dec 4, 74	Filed Pltffs. First Set of Interrogs. & requests for production of documents.	
Dec 4, 74	Filed Pltffs. Notice of deposition & request for inspection of property on 1/12/74	
Dec 11, 74	Filed Pltffs. Notice of Motion for order this action be maintained as a class action. ret. 12/17/74.	
Dec 11, 74	Filed Pltffs. Memorandum of Law.	
Dec 30, 74	Filed Affidavit by Arlene R. Silverman in opposition to pltffs. application granting them class action status.	
Jan 17, 75	Filed Defts. affidavit and notice of motion for an order extending time to answer complaint until 2/4/75, & defts. time to answer interrogs. 2/21/75. * ret. 2/4/75	
Jan 17, 75	Filed Defts. Memorandum of Law.	
Jan 22, 75	Filed Affidavit in opposition to defts. motion for extension of time to answer complaint & Interrogs. by Eric Neisser.	
Feb 10, 75	Filed Memo. End. on motion dtd. 12/11/74. Motion granted. Settle Order on Notice. Ward J. (mailed notice)	
Feb 10, 75	Filed Memo. End. on motion dtd. 1/17/75. Motion granted. So Ordered Ward J. (mailed notice)	
Feb 6, 75	Filed ANSWER.	
2-27-75	PRE-TRIAL CONFERENCE HELD BY <i>Ward</i>	
Mar 10, 75	Filed Order that this action be maintained as a class action pursuant to rule 23 (b)(2) FRCP & the class shall consist of all persons who are or will be confined at Bedford Hills Correctional Facility & that as Notice of this order be posted by posting a copy of the following Notice on each of the (12) twelve general population housing corridors in the day room in the special housing unit & in the day room in the hospital bldg. & Further ordered Legal Aid Society reproduce copies as indicated & deft. Janice Warne cause a copy of the Notice as indicated to be posted as indicated. Ward J. (mailed notice)	
Mar 10, 75	Filed Order that defts. counsel produce for inspection & copying all medical records concerning any named plttf. & as indicated. Ward J. (mailed notice)	
Mar 10, 75	Filed Memo. End. on motion dtd. 12/11/74. Motion granted. Settle Order on Notice. Ward J. (mailed notice)	
05-16-75	Filed Pltffs'. affidavit & notice of motion for a preliminary injunction, ret. 5-27-75.	
05-16-75	Filed Pltffs'. memorandum of law in support of motion for a preliminary injunction.	
06-11-75	Filed Defts'. affidavit in opposition to Pltffs'. motion for a preliminary injunction.	
06-11-75	Filed Defts'. memorandum of law in opposition to Pltffs'. motion for preliminary injunction.	
07-01-75	Filed Pltffs'. affidavit & notice of motion for physical examination and to compel production of documents. ret. 7-8-75.	
07-01-75	Filed Pltffs'. memorandum of law	

(Continued)

DATE	PROCEEDINGS	Date Order or Judgment Noted
Jul 15, 75	Filed David Frost M.D. Answer to First Set of Interrogs.	
Jul 17, 75	Filed Memo. End on motion dtd. 5-16-75. Pltffs. having at this time not sufficiently demonstrated their entitlement to the extraordinary relief sought here, the Court denies pltffs. motion, directs the completion of discovery by 9-30-75 and the filing of a pretrial order by 10-30-75, to be followed by an early trial on the merits. Ward J. (mailed notice)	
Jul 17, 75	Filed Memo. End. on motion dtd. 7-1-75 Motion disposed as follows: That branch of the motion which seeks to compel the production of medical records of the ten named individuals granted on consent; That branch of the motion which seeks to compel physical examination of the ten named individuals withdrawn without prejudice to its renewal at a later date. Settle order or notice. Ward J. (mailed notice)	
Jul 16, 75	Filed Affidavit in opposition to pltffs. motion for physical examinations & to compel production of documents by Arlene R. Silverman.	
Jul 24, 75	Filed Consent Order that on or before 8-4-75 defts. will provide pltffs. with complete medical records of Nora Arner, Rebecca Booker, Rosemary Cutshaw, Theresa Durante, Yvonne Lee, Evelyn Nann, Ola Mae McCoy, Elizabeth Powell, Bonnie Richards & Carolyn Smithers; & on 9-19-75 defts. will provide pltffs. with as indicted; Etc. Ward J.	
09-05-75	Filed Pltffs. Second Set of Interrogs. & request for production of documents.	
09-05-75	Filed Pltffs. Amended Second Set of Interrogs. & request for production of documents.	
10-09-75	Filed Pltffs. Interrogs. to Dr. Loudon.	
11-03-75	Filed Consented Pre Trial Order. Ward J.	
12-12-75	PRE-TRIAL CONFERENCE held by Ward J.	
1-5-76	Pltffs. motion to Dismiss Interrogs. by pltffs.	
1-5-76	Pltffs. motion to Dismiss Interrogs. by pltffs.	
2-4-76	Filed Writ of H/C ad Test for Mary Ledgister. Clerk- Allowed Ward, J.-	
2-4-76	Writ satisfied, Ward, J. 1-13-76	
2-4-76	Filed Writ of H/C ad Test. for Phyllis Hapeman-Clerk-Writ satisfied-Ward, J. 1-13-76.	
1-12-76	NON-JURY TRIAL BEGUN & CONT'D	
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2-9-76		
2-17-76	Filed Writ of H/C ad Test. Re: T. Durante with Marshal ret. Writ Satisfied-Ward, J. executed 2-5-76.	
2-17-76	Filed Writ of H/C ad Test Re: Ann Galloway—Writ Satisfied-Ward, J.-Marshal ret executed 2-5-76.	
2-17-76	Filed Writ of H/C ad Test. Re: Y. Lee-Writ Satisfied-Ward, J.-Marshal ret executed on 2-11-76.	

Continue on page #4

DATE	PROCEEDINGS	Date Order or Judgment Made
5-28-76	Filed Pliffs' Post Trial Memo Proposed facts etc.	
6-28-76	Filed defts' memorandum of law. This memorandum is submitted in opposition to plaintiff's request for declaratory relief.	
6-29-76	Filed Pliffs' Reply Memo.	
6-29-76	Filed Pliffs' Reply Memo.	
04-26-77	Filed Opinion #4581-- within 30 days Pliffs' & Defts' counsel shall meet and within 10 days thereafter shall report to court their progress in reaching an agreement on new means & procedures for: (1) providing better access to medical providers by inmates in sick wing; (2) conducting sick call which provides adequate nurse screening and reasonably prompt access to a physician; (3) insuring that ordered lab work is reported & followed-up & medical reappointments are scheduled; (4) periodic self-audits of performance of medical care delivery system, and record keeping procedures conducive to such audits.-- Ward, J. (m/n).	
5-5-77	Filed transcript of record of proceedings dated JAN 12, 13, 14, 16, 18, 1976	
5-5-77	Filed transcript of record of proceedings dated JAN 20, 23, 28, 29, FEB 2, 3, 1976	
5-12-77	Filed transcript of record of proceedings dated FEB 4, 5, 6, 9, 1976	
5-12-77	Filed Pliffs. proposed findings of fact and conclusions fo law.	
5-18-77	Filed defts. notice of motion for an order modifying the finding of this court that "the Physical health care administrator's failure to observe the lobby clinic procedure and insure its adequacy as a sick call/physician referral procedure amounted to reckless failure to inform themselves whether pliffs' medical nee could be met in this fashion.....Ret. 5-24-77.	
5-18-77	Filed defts. memorandum of law.	
5-20-77	Filed Pliff's Affidvt. in opposition to defts' motion to modify the finding of th court re: health administrator's failure to insure the adequacy of the lobby clinic procedure etc..	
6-9-77	Filed Stip & Order that pliff and defts' counsel time for reporting to the Court pur to the opinion of 4-25-77 is ext to 6-14-77-Ward, J.	
6-23-77	Filed Memo-Ent on motion filed on 5-18-77....Motion granted in part and denied in part in accordance with memorandum decision filed herewith. So Ordered.....WARD, J. m/n	
6-23-77	Filed Memorandum & decision The motion is denied, but the opinion is modified as hereinafter discussed...Etc...The motion is in all other respects denied..So Ordered.....WARD, J. m/n	
7-11-77	Filed memorandum in support of pliffs' proposed judgment.	
7-11-77	Filed Judgment it is ordered that defts. their successors in office and all officials, employees, agents and others acting in concert with them who have notice of this Judgment are enjoined to comply fully and promptly with each and every part of the following,..... See Judgment & that Until terminated by order, this Court shall retain jurisdiction over this action for any further orders or action which may be appropriate or necessary for the implementation or enforcement of this judgment or any of the provisions thereof.... WARD, J. Judgment Ent. CLERK. on 7-11-77. m/n	
7-21-77	Filed Order that the Judgment Ent. 7-11-77 is stayed until Friday, 8-5-77 at 5:00 P.M. to enable defts. to apply to the Court of Appeals for any further relief they deem appropriate, & that defts' obligations to distribute copies of the Judgment to inmates & Personnel, set forth in the judgment are stayed until 48 hours after copies are furnished to defts. or Aug. 8, 1977 at 5:00 P.M. whichever is later.....So Ordered....WARD, J. m/n	

CONT'D ON PAGE 54

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF Louise Todaro, Et.Al.	DEFENDANT Peter Preiser, Et.Al.	DOCKET NO. 74-4581 PAGE 5 OF 5 PAGES
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DATE.	NR.	PROCEEDINGS WARD, J.
2-77		Filed defts. notice of appeal to the U.S.C.A. 2nd Circuit for the judgment entered herein on July 11, 1977. Mailed Copy.
2-77		Filed supplemental answers to interrogatories by Dr. Loudon.
2-77		Filed answers by Dr. Loudon to interrogatories.
2-77		Filed defts. first set of interrogatories.
2-77		Filed defts. Frances E. Clement, answers to plaintiffs' second set of interrogatories.
2-77		Filed defts. Marie Daly, answers to plaintiff's second set of interrogatories.
2-77		Filed defts. objections to plaintiffs' first set of interrogatories.
2-77		Filed defts. David Frost, M.D., supplemental answer to plaintiffs' first set of interrogatories.
12-77		Filed report of plaintiffs to court pursuant to order of April 25, 1977 and annexed proposed judgment
12-77		Filed report of defendants to court pursuant to order of April 25, 1977 and annexed proposed counter judgment.
3-16-77		Filed stipulation designating exhibits to be retained by counsel temporarily.

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man striving to save his bank with little or no concern for his investment. But, by the same token, his dominant motivation does not appear to be his employee status. Mr. Alsobrook is not entitled to a deduction pursuant to § 166.

[13] In pertinent part § 165 of the Internal Revenue Code of 1954, 26 U.S.C. § 165 provides for deductions for business losses.⁸ The Plaintiff does not have a loss in the sense contemplated by this section. The plaintiff in essence replaced the classified loans in the bank and had a right to his pro rata share of the proceeds collectible from those loans. When he claimed a loss, he was claiming a loss due to the worthlessness of the debts.

The loss and the bad debt sections of the Code have long been considered mutually exclusive. *Putnam v. Commissioner*, 352 U.S. 82, 77 S.Ct. 175, 1 L.Ed.2d 144 (1956); *Spring City Co. v. Commissioner*, 292 U.S. 182, 189, 54 S.Ct. 644, 78 L.Ed. 1200 (1934); see *Horne v. C.I.R.*, 523 F.2d 1363 (9th Cir. 1975); *Stahl v. United States*, 142 U.S.App. D.C. 309, 441 F.2d 999 (1970); *Stratmore v. United States*, 420 F.2d 461 (3rd Cir. 1970). Plaintiff did in fact suffer his losses because he knowingly purchased a block of bad debts. Where the Plaintiff has been unable to meet his burden of proof that the debts were business bad debts, he cannot avoid the strictures of § 166 by claiming instead that they were business losses.

Moreover, even if we were to consider the Plaintiff's claims that he has sustained a business loss, we would again have to test it against a dominant motivation standard. See, *Generes*, supra, 405 U.S. at 105, 92 S.Ct. 827; *Imbesi v. C.I.R.*, 361 F.2d 640, 644 (3rd Cir. 1966); *Austin v. C.I.R.*, 298 F.2d 583, 584 (2nd Cir. 1962).⁹ The Plaintiff is factually unable to meet that standard

8. "26 U.S.C. § 165. Losses

(a) *General rule*.—There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

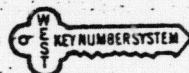
(c) *Limitation on losses of individuals*.—In the case of an individual, the deduction under subsection (a) shall be limited to—

for the reasons stated previously. He is not entitled to a deduction under Section 165.

As the Plaintiff has failed to show that he is entitled to a deduction under any of the sections claimed,

IT IS ORDERED, that his claim for a tax refund is *denied*. Counsel for the Defendant shall forthwith prepare and submit appropriate form of judgment in conformity herewith.

The foregoing memorandum and order constitutes compliance with Rule 52(a) of the Federal Rules of Civil Procedure.



Louise TODARO et al., Plaintiffs,

v.

Benjamin WARD, Commissioner of the New York State Department of Correctional Services, et al., Defendants.

No. 74 Civ. 4581.

United States District Court,
S. D. New York.

April 25, 1977.

Inmates at women's correctional facility brought civil rights action challenging the delivery of medical care at the institution. The District Court, Robert J. Ward, J., held that the medical system was unconstitutionally defective in relying on a dangerous x-ray machine, in denying or substantially delaying access to primary care

- (1) losses incurred in a trade or business;
- (2) losses incurred in any transaction entered into for profit, though not connected with a trade or business;"

9. As noted by the Plaintiff "the same principles are applicable in determining whether a bad debt was incurred in a trade or business or whether a loss was incurred in a trade or business." See, note 6, supra.

physicians as a result of lobby clinic procedures for screening and record keeping, in failing to provide adequate communication with patients in sick wing, and in failing to provide adequate follow-up laboratory services and medical appointments.

Judgment for plaintiffs.

1. Prisons ⇐ 4

Federal district courts can act upon complaints from state prisoners concerning conditions of their confinement only when rights guaranteed by United States Constitution are infringed. 28 U.S.C.A. § 1343; 42 U.S.C.A. § 1983.

2. Prisons ⇐ 4

When federal court is asked to intervene in administration of a state prison, notion of comity, or due regard for state's sovereignty over its own internal affairs, places constraint on federal courts.

3. Criminal Law ⇐ 1213

Prisons ⇐ 17

Denial of medical care to state prisoner constitutes violation of Eighth Amendment; however, medical care is not denied unconstitutionally by an inadvertent failure to provide adequate medical care or by negligent diagnosing or treating of a medical condition, but rather, standard for determining whether there has been unconstitutional denial of medical care is whether there has been deliberate indifference to prisoner's serious illness or injury. U.S.C.A. Const. Amend. 8.

4. Prisons ⇐ 17

To prove individual claim of unconstitutional denial of medical care in state prison, it is necessary to show either denied or unreasonably delayed access to physician for diagnosis or treatment of discomfort-causing ailment, or failure to provide prescribed treatment. U.S.C.A. Const. Amend. 8.

5. Criminal Law ⇐ 1213

Delayed performance of general admission physical upon entrance to women's correctional facility did not constitute cruel

and unusual punishment, absent proof that infection was thereby introduced into prison's population, or that inmates consequently received medically harmful job assignments. U.S.C.A. Const. Amend. 8.

6. Criminal Law ⇐ 1213

Exposing prison inmates to dangerous x-ray machine not in compliance with minimum state standards constituted cruel and unusual punishment. U.S.C.A. Const. Amend. 8.

7. Criminal Law ⇐ 1213

Prison's maintenance of hospital sick wing constituted cruel and unusual punishment, where inadequacies in observation of and communication with inmate patients subjected seriously ill inmates to great risk of harm. U.S.C.A. Const. Amend. 8.

8. Criminal Law ⇐ 1213

Correctional institution "lobby clinic" deprived inmates of necessary medical care and constituted cruel and unusual punishment, in that some inmates were denied access to physician for substantial period of time and lobby clinic operations, facilities and records caused a failure in screening, which resulted in substantially delayed or denied access. U.S.C.A. Const. Amend. 8.

9. Criminal Law ⇐ 1213

Failure to carry out physician-ordered treatment of prison inmate constitutes cruel and unusual punishment. U.S.C.A. Const. Amend. 8.

10. Criminal Law ⇐ 1213

State correctional institution system for delivering follow-up laboratory services and medical appointments constituted cruel and unusual punishment, because, due to administrative and communication difficulties, system failed to insure that all doctors' orders were carried out, resulted in unnecessary prolongation of pain, and contained within it the potential for dire consequences. U.S.C.A. Const. Amend. 8.

11. Criminal Law ⇐ 1213

Failure to take physician-ordered blood pressure readings and to administer prescribed medications to prisoners constituted

cruel and
Const. Ar

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14. Criminal

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unusual punishment. U.S.C.A. Const. Amend. 8.

Rights ⇐ 13.13(3)

ivil rights action challenging deliv-
ical care at women's correctional
vidence failed to establish that
medical care allowed inmates to
work assignments which were in-
te to their physical condition.
Const. Amend. 8.

Rights ⇐ 13.13(3)

ivil rights action challenging deliv-
ical care at women's correctional
inmates failed to establish, either
f general statistics or individual
at prison officials systematically
imates to suffer unreasonable de-
btaining access to outside special-
C.A.Const. Amend. 8; 42 U.S.C.A.

inal Law ⇐ 1213

on elective surgery referral proce-
ich required review by second or
d physician after examining physi-
determined that surgery was re-
as not, in itself, cruel and unusual
ent, notwithstanding delay engen-
y such procedure. U.S.C.A.Const.
8.

egal Aid Society, Prisoners' Rights
New York City, for plaintiffs; Eric
ser, Ellen J. Winner, Warren H.
nd, III, New York City, of counsel.
J. Lefkowitz, Atty. Gen., New York
r defendants; Arlene R. Silverman,
ork City, of counsel.

OPINION

ERT J. WARD, District Judge.

civil rights class action under 42
§ 1983 and 28 U.S.C. § 1343 chal-
the delivery of medical care at the
l Hills Correctional Facility (herein-
Bedford Hills"). Plaintiffs, who rep-
a class consisting of all persons who
will be confined at Bedford Hills,
) a declaratory judgment that the

medical care provided at Bedford Hills vio-
lates their rights under the eighth and four-
teenth amendments to the United States
Constitution, and (2) an injunction against
future violations of their constitutional
rights. Named as defendants are: the
Commissioner of Correctional Services; the
Assistant Commissioner for Health Services
of the New York State Department of Cor-
rections (Dr. Loudon); the Southern Re-
gional Director of Health Services of the
New York State Department of Corrections
(Dr. Frost); the Superintendent of Bedford
Hills; the Health Services Director of Bed-
ford Hills (Dr. Williams); the Nurse Ad-
ministrator of Bedford Hills (Ms. Daly);
and a surgical consultant (Dr. Tschorn),
who, prior to the arrival of a full-time
Health Services Director, performed some
of the functions of this position.

Plaintiffs contend that the medical sys-
tem is unconstitutionally defective in the
following respects: first, admission health
screening, including x-ray reports, is sub-
stantially delayed, and the admission
screening procedure includes improper re-
liance on dangerous equipment (antiquated
x-ray machine) and techniques (catheteriza-
tion); second, access to primary care physi-
cians is denied or substantially delayed as a
result of the lobby clinic procedures for
screening and record keeping; third, pa-
tients in sick wing endure unnecessary suf-
fering and are subjected to undue risk of
harm because inadequate facilities, especial-
ly communication facilities, result in inade-
quate observation of seriously ill patients;
fourth, diagnostic work ordered by a physi-
cian is not done at all, or is not done within
a reasonable period after being ordered, or
when done there are delays in reporting the
results and abnormal results are not fol-
lowed up in a timely fashion; fifth, as a
result of poor procedures and poor commu-
nication, follow-up medical appointments
are not kept or are not scheduled; sixth,
the chronically ill are inadequately moni-
tored; seventh, as a result of failure to
follow-up, inmates are given medically in-
appropriate work assignments; eighth, ac-
cess to outside specialists is denied or de-

layed; and finally, access to outside consultations for elective surgery is denied or delayed.

THE LAW

[1, 2] Federal district courts, being courts of limited jurisdiction, can act upon complaints from state prisoners concerning the conditions of their confinement only when rights guaranteed by the United States Constitution are infringed. 42 U.S.C. § 1983; 28 U.S.C. § 1343(3); see *Wilwording v. Swenson*, 404 U.S. 249, 92 S.Ct. 407, 30 L.Ed.2d 418 (1971) (per curiam); cf. *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972) (per curiam); *Johnson v. Glick*, 481 F.2d 1023 (2d Cir. 1973). In addition to this jurisdictional limitation, when a federal court is asked to intervene in the administration of a state prison, the notion of comity, or due regard for the state's sovereignty over its own internal affairs, places another constraint on the federal courts. *Preiser v. Rodriguez*, 411 U.S. 475, 490-92, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973). Moreover, federal courts have traditionally approached prison litigation with restraint, recognizing that the problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree. Most require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. For all of those reasons, courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform.

Procunier v. Martinez, 416 U.S. 396, 404-05, 94 S.Ct. 1800, 1807, 40 L.Ed.2d 224 (1974) (footnote omitted).

Thus, federal intervention into the internal affairs of prisons has been limited and reluctant.

However, federal courts are empowered to act whenever constitutional rights are infringed. Judicial restraint counsels caution, but not the abdication of judicial responsibility for the enforcement of constitu-

tional rights. *Procunier v. Martinez*, *supra* at 405, 94 S.Ct. 1800.

[3] It cannot now be doubted that the denial of medical care to a state prisoner constitutes a violation of the eighth amendment, made applicable to the states by the fourteenth amendment. *E. g.*, *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976); *Bishop v. Stoneman*, 508 F.2d 1224 (2d Cir. 1974); *Newman v. Alabama*, 503 F.2d 1320 (5th Cir.), *cert. denied*, 421 U.S. 948, 95 S.Ct. 1680, 44 L.Ed.2d 102 (1974); *Fitzke v. Shappell*, 468 F.2d 1072 (6th Cir. 1972). It also cannot be doubted that medical care is not denied unconstitutionally by "an inadvertent failure to provide adequate medical care" or by "negligent . . . diagnosing or treating [of] a medical condition." *Estelle v. Gamble*, *supra* at 105-06, 97 S.Ct. at 292; see, *e. g.*, *Corby v. Conboy*, 457 F.2d 251, 254 (2d Cir. 1972); *United States ex rel. Hyde v. McGinnis*, 429 F.2d 864 (2d Cir. 1970). Rather, the standard for determining whether there has been an unconstitutional denial of medical care is whether there has been "deliberate indifference to a prisoner's serious illness or injury." *Estelle v. Gamble*, *supra* at 105, 97 S.Ct. at 291; *Corby v. Conboy*, *supra*; see *Williams v. Vincent*, 508 F.2d 541 (2d Cir. 1974); *Startz v. Cullen*, 468 F.2d 560, 561-62 (2d Cir. 1972); *Martinez v. Mancusi*, 443 F.2d 921 (2d Cir. 1970), *cert. denied*, 401 U.S. 983, 91 S.Ct. 1202, 28 L.Ed.2d 335 (1971).

What constitutes deliberate indifference can be gleaned from precedent. Cases which apply this standard generally fall into two categories. First, there are those cases which have held unconstitutional denied or unreasonably delayed access to a physician for diagnosis and treatment of physical conditions which, although not life-threatening or likely to result in permanent disability, cause discomfort. For example, in *Corby v. Conboy*, *supra*, denial of access to a physician for diagnosis and treatment of an allegedly serious nasal disorder was held to state a claim. In *Miller v. Carson*, 401 F.Supp. 835, 878 (M.D.Fla.1975), the court found "shocking" a two-week delay in

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pe; *Hughes v. Noble*, 295 F.2d 495
(1961).

Second category of cases which apply
deliberate indifference standard in-
those in which the treatment pre-
by a physician was not adminis-
In *Martinez v. Mancusi*, 443 F.2d
Cir. 1970), *cert. denied*, 401 U.S. 983,
1202, 28 L.Ed.2d 335 (1971), a pris-
who had undergone surgery alleged
was removed from a hospital and
d to prison in contravention of his
an's orders that he remain lying
moving his legs as little as possible.
her alleged that he was denied med-
prescribed for his pain. The court
these allegations sufficient to state a
f unconstitutional denial of medical
See also *Campbell v. Beto*, 460 F.2d
h Cir. 1972); *Tolbert v. Eyman*, 434
25 (9th Cir. 1970); *Edwards v. Dun-*
5 F.2d 993 (4th Cir. 1966); *Derrick-*
Keve, 390 F.Supp. 905 (D.Del.1975).

In summary, then, to prove an indi-
claim of unconstitutional denial of
l care it is necessary to show either
or unreasonably delayed access to a
an for diagnosis or treatment of a
fort-causing ailment, or failure to
e prescribed treatment.

will be detailed later, plaintiffs' proof
sustain, under the above standards,
individual's claim of unconstitutional de-
medical care. The instant case, how-
involves not an individual claim for
but rather an institution-wide chal-
to all aspects of a system of medical
elivery. Thus, the question posed by
ase is at what point do individual
es in the overall operation of a prison
al care system add up to deliberate
erence which would render the entire
n unconstitutional?

Second Circuit case of *Bishop v.*
man, *supra*, involved a challenge to
medical care delivery system of an en-
stitution. There the court concluded

that "[a] series of incidents closely related
in time . . . may disclose a pattern of
conduct amounting to deliberate indiffer-
ence to the medical needs of prisoners,"
which would constitute an unconstitutional
denial of medical care. 508 F.2d at 1226.
Alternatively, the court held that deliberate
indifference may be proven by evidence
that "the medical facilities were so wholly
inadequate for the prison population's needs
that suffering would be inevitable." *Id.*

In applying these two tests of deliberate
indifference to the present case, the Bed-
ford Hills medical care system must be
evaluated in context, i. e., as a health care
system within a prison. One factor which
must be considered is that the prisoner, "re-
strained by the authority of the state,
cannot himself seek medical aid."
Fitzke v. Shappell, *supra* at 1076 (emphasis
in original). Consequently, "[a]n inmate
must rely on prison authorities to treat his
medical needs;" *Estelle v. Gamble*, *supra* at
103, 97 S.Ct. at 290.

One important consequence of this is that
demands upon a prison health care system
are going to be substantial. For example,
Bedford Hills' inmates cannot self-treat mi-
nor ailments such as headaches, upset stom-
achs, or colds. Nor can they just remain in
bed when they feel ill, for they are allowed
only two days of room rest a month. Thus,
when due to a minor ailment an inmate is
not feeling well enough to carry on her
daily routine, she must turn to the medical
care system even though requiring no more
treatment than an aspirin or a day in bed.

Another consequence of inmate depend-
ence is that the prison health care system
must provide the full gamut of health care
services, from treatment for minor, routine
instances of illness to more esoteric special-
ty care.

Another consideration, testified to by one
of plaintiffs' experts, is that there is a
higher incidence of medical problems
among prisoners than in a similarly aged
unincarcerated population. Indeed, one
factor which repeatedly impressed the court
as it reviewed plaintiffs' medical records

was the extent to which Bedford Hills inmates suffered from serious medical conditions. This factor, too, influences the demand for medical services and affects the determination of what should be deemed adequate.

On the one hand, then, the court recognizes the somewhat unique demands for medical services at Bedford Hills and appreciates the need for judicial restraint before interfering with the administration of a state prison. On the other hand, provision of essential medical care, unlike prison discipline, does not fall within the sphere of correctional concern to which great deference is due. *Newman v. Alabama*, *supra* at 1328-30.

Against the foregoing legal background, the Court now turns to the facts of this case and the application of the constitutional standards thereto.

BACKGROUND FACTS

Bedford Hills, located at Bedford Hills, New York and operated by the New York State Department of Correctional Services ("the Department"), is a medium security prison for the confinement of all women prisoners who are sentenced and committed to the custody of the Department but are not on work release or committed to the facility for the criminally insane. The approximately 380 women at Bedford Hills are housed primarily in three residence buildings known as "112," "113," and "114." In addition, there is a "hospital" building, which houses some inmates, a segregation and reception building, an administration building and an industry building.

The health services at Bedford Hills are located principally in the "hospital" build-

ing, which is within a five or six minute walk of the residences. Although known as the hospital building, it is not certified as a general hospital and defendants do not use it as such. The first floor contains the main ambulatory care clinic which consists of two physicians examining rooms, a medication station, laboratory, x-ray room, pharmacy, dentist's office, and the administrative office of the medical staff. The remainder of the first floor and the corridor of the floor above it constitutes the infirmary or "sick wing."

The medical staff at Bedford Hills as of the time of trial consisted of eight nurses, the nurse administrator, one full-time physician, one part-time gynecologist, a laboratory technician, a part-time pharmacist, and a part-time x-ray technician. There is also a medical clerk and stenographer. The Bedford Hills medical staff is supplemented by consultants and outside hospital facilities.

The nursing staff is the crucial link in the chain of health care delivery at Bedford Hills. The nurses run the lobby clinic,¹ prepare the physician appointment schedules, call patients to the clinic for doctors' appointments, conduct rounds of the reception, segregation, and hospital buildings, and assist during all physical examinations. In fact, physicians cannot see patients unless a nurse is available. In addition, nurses respond to emergency calls from the corrections officers and handle routine health care inquiries. Nurses also conduct the initial interview and screening of new admissions to Bedford Hills. Also, prior to October 31, 1974, the nurses had to prepare all of the individual prescriptions because there was no pharmacist.² In short, the

Ms. Daly, Nurse Administrator, served notice that she would no longer fill doctors' prescriptions. For the first three months, the pharmacist's performance was hampered by the lack of pharmacy facilities.

The amount of nurse time consumed by just this one function is indicated by the fact that the part-time pharmacist soon found it impossible to keep up with the prescriptions during the hours she was at the facility.

1. See section III *infra*, where the lobby clinic is described.

2. The dispensing of prescription drugs by nurses violated state law. As early as 1973, the Joint Commission on Accreditation of Hospitals had informed the administration of Bedford Hills that the nurses were performing an unlawful function and recommended the hiring of a part-time pharmacist. A year passed before a pharmacist was hired and then, only when

are delivery system at Bedford Hills
not operate without the nurses.

ally, the Nurse Administrator, testi-
fied that to perform these duties she re-
quired at a minimum, two nurses on the
day shift (8:00 A.M. to 4:00 P.M.), two on
the evening shift (4:00 P.M. to 12:00 P.M.),
and two on the night shift (midnight to 8:00
A.M.). She further testified that barring
illnesses she could accomplish this with
two nurses. However, Ms. Daly recog-
nized that nurses' illnesses, vacations, and
other factors could interfere with the coverage which
was minimally adequate. For exam-
ple, on December 2, 1975, when Ms. Daly
was on the night shift, the night nurse was ill and
there was no coverage of the midnight to
4:00 A.M. shift. On December 4, there was
no nurse on the day shift and one for
the evening shift. It was ap-
parent to the Court at the time of trial,
that began on January 12, 1976, that eight
nurses could not provide continuous medical
coverage seven days a week. For example,
on January 12 and 16, 1976, there was only
one nurse on the evening shift, and for the
days of January 5 through 11 and 12
through 18, there was no night coverage
seven days a week.

From the fall of 1974, however, Ms.
Daly had only six nurses. As a conse-
quence, even when all six worked, there
was only one nurse on the evening shift
seven days a week, and the night shift was
covered two nights a week. Vacations
and illnesses further reduced the coverage.
In the fall of 1974, one and one-half nurse
positions were loaned to Bedford Hills by
another institution. However, due to resig-
nations, by April 1975 only one half-time
and six full-time nurses remained. The va-
cancies were not filled until the fall of 1975.

Dr. Frost in a May 20, 1975 report to Dr.
Loudon stated that upon visiting Bedford
Hills he found a severe nursing shortage to
be a key problem. He described the effect
on the medical program as follows:

"We find that a weak link in the flow of
patient care is the lack of nursing person-
nel. This shortage of nursing personnel
is particularly important to this program

that relies heavily on part-time physicians
to provide the clinical services. Such
physicians have outside demands that are
priority items to them. Hence, the [Cor-
rectional Facility] must have some degree
of flexibility to utilize their services at
times when they can report to the [Cor-
rectional Facility]. With a shortage of
nurses, the flexibility is minimal with the
result that the program constantly falls
behind in physician services.

In a memorandum of August 25, 1975, Dr.
Frost further informed Dr. Loudon that the
shortage of nurses was resulting in a limita-
tion of physician services in that physician
hours had to be cancelled due to the un-
availability of nurses to assist the doctors.

Dr. Williams himself testified that he was
operating with a skeletal staff. He indi-
cated that when fully staffed he barely had
enough nurses.

Thus, the defendants admit that, on occa-
sion, they have found the nursing staff
inadequate.

Physician services at Bedford Hills have
varied widely in the approximately two and
one-half years examined in this lawsuit. In
the fall of 1973, Dr. Schoenberger was the
Facilities Health Services Director. Al-
though employed full-time at the institu-
tion, he apparently did not spend the re-
quired thirty-five hours a week there. Dr.
Schoenberger was assisted by Dr. Tschorn,
who saw patients approximately one and
one-half to two hours a day, and by Dr.
Kones.

Dr. Kones was the next Facilities Health
Services Director. As such, he spent about
two to four hours daily at the institution.
Dr. Tschorn continued to see patients for
about one and one-half to two hours a day
during this time. Dr. Kones resigned in
June 1974.

From June 1974 until Dr. Williams as-
sumed the position in September 1974, Bed-
ford Hills was without a Health Services
Director and full-time physician. Dr.
Tschorn continued to see patients and Drs.
Enders and Yu provided additional physi-
cian coverage.

As of the time of trial, Dr. Williams continued to hold the position of Health Services Director, and spent about five to six hours a day, five days per week, at the institution. Although he has spent more hours at the facility than did his predecessors, not all of this time has been spent seeing patients.

At the time of trial, Dr. Saadat served as a part-time physician on the regular staff of the institution. According to the defendants, he sees patients approximately two hours per day, five days per week, principally providing gynecological services. For the nine week period from November 3, 1975 to January 3, 1976, Dr. Saadat saw an average of twenty-seven patients a week for episodes of illness.³ Dr. Saadat also alternates on call weekends with Dr. Williams.

The regular medical staff, as of the time of trial, was supplemented by four physicians who serve on a consultant basis. Dr. David, a urologist, practices general medicine at the Facility two days a week, usually Monday and Thursday, from 9:00 A.M. to noon. Dr. Ogwo, also a urologist, practices general medicine at the Facility Tuesday and Wednesday, from 10:00 A.M. to 1:00 P.M. Dr. Poon does general medicine on Friday from 9:00 A.M. to noon. Dr. Enders has general medicine hours on Saturday from 10:00 A.M. to 1:00 P.M. Thus, among these four doctors, regular primary physician care is provided six days a week, three hours a day.

In addition to these primary care physicians, Bedford Hills is serviced by a number of specialists. A dermatologist holds a 3-hour clinic one day every other week, and a neurologist, a podiatrist and an optometrist hold clinics in the specialties. Although there was testimony that an optometry clinic was held one day a week and that the other clinics were held approximately once a month, the records for the nine-week period from November 3, 1975 to January 3, 1976 reflect that only the optometry clinic was held and that only once.

3. This does not include patients seen for admission examinations, parole or work release ex-

amination. In addition to the medical services provided at the institution, Bedford Hills uses the services of outside consultants and local hospitals when needed. Northern Westchester Hospital, and Westchester County Medical Center ("Grasslands") are utilized principally for emergencies, diagnostic testing and surgery. Plastic surgery is performed at Fishkill Correctional Facility.

Plaintiffs' experts agreed that the present level of physician staffing is adequate for an institution the size of Bedford Hills. However, they contend that the quality and availability of medical care cannot be measured solely by the number of doctors. Rather, they claim, and the Court agrees, that it is necessary to inquire whether the available physicians are used to maximum advantage so that medical services timely reach all those in need. In other words, it is necessary to examine how various components of the medical care delivery system interact with each other and with correctional regulations so as to either afford or deny the physician services that are potentially available.

To prove their allegations, plaintiffs introduced the medical records of sixty-four Bedford Hills inmates who had signed medical releases. Defendants argued at trial that these records are not representative. The Court rejects this argument. Although not a random sample in a statistical sense, the records were not pre-selected by plaintiffs' attorneys. Rather, what was introduced was limited by this Court's discovery order issued in response to the defendants' resistance to broader discovery. If the records introduced by plaintiffs were atypical, defendants were free to introduce other records, provided appropriate measures were taken to protect inmate privacy. This they failed to do, and so the Court deems the records produced by plaintiffs to be representative of the medical treatment provided to the plaintiff class.

The Court cannot, without unduly extending an already lengthy opinion, make

aminations, routine gynecological examinations, or those seen in sick wing or in hospitals.

specific findings with respect to every instance of allegedly inadequate treatment and by plaintiffs. Accordingly, the absence of a discussion and specific finding with respect to certain instances should not be taken as an oversight. Rather, the Court has examined every incident noted by plaintiffs and has concluded that cumulatively these additional incidents neither add nor detract from the case otherwise presented.

The Court now turns to a review of the evidence with respect to the actual care rendered the inmates of Bedford Hills by the medical system.

FINDINGS OF FACT AND APPLICATION OF LAW

Admission Health Screening

On the day of arrival at Bedford Hills, each new inmate is referred to the medical staff for admission health screening. This process has many functions. First, it serves to prevent the introduction of infectious diseases into the institution. Second, it is used in determining the appropriate institutional classification for the inmate. Third, it is necessary to identify or confirm acute chronic conditions, such as diabetes or hypertension, which require treatment. Finally, it can be an important tool in practicing preventive medicine.

At admission health processing, the inmate is seen by a nurse who takes a medical history, performs vaginal and rectal examinations for contraband, and takes and records the inmates vital signs. The nurse also performs a test for gonorrhea and obtains urine for a urinalysis. Additional lab work is scheduled.

Defendants' regulations provide that each new inmate should receive, as part of the admission health screening, a gynecological and general physical examination the day following her arrival or as soon thereafter as possible. Despite this regulation, the evidence adduced establishes that in the

It appears that shortly before trial, the defendants altered their admissions procedures to indicate all reports of admission physicals

two-year period from October 1973 through September 1975, general admission physical examinations, on average, were not performed until approximately forty-three days after admission, and gynecological examinations, on average, were not performed until approximately twenty-seven days after admission. Within the two-year period, the interval between admission and examination varied widely, from four days for the performance of a general physical in March and June 1975, to one hundred and twenty-nine days in March 1974. The interval between admission and performance of an admission gynecological examination varied from a high of sixty-two days in February 1974, to two days in September 1974.

Defendants do not challenge the veracity of these statistics derived from an analysis of defendants' own records. Rather, they argue that women leave the institution for court appearances and the like and that plaintiffs' statistics fail to account for such obstacles. Defendants' argument must be rejected because they failed to offer any evidence tending to support this contention in general or in regard to the nineteen specific cases cited by plaintiffs.

Plaintiffs' experts condemned the delays in providing admission health examinations, all agreeing that the examinations should be performed within one week of admission. One reason was that the purposes of the examination are not achieved when the examination is delayed. For example, one of defendants' purposes in performing admission physicals is to properly classify an inmate for work assignments; yet women are released into the general population and assigned work after three weeks at the institution, a point at which, on the average, they will not have had their admission physical.⁴

Plaintiffs introduced evidence of problems that arose as a result of the failure to perform admission physicals promptly. For example, the nurse's admission note for Paulette Blackstock indicates that she had a

should be available prior to an inmate's release from "reception."

vaginal discharge when she was admitted on July 16, 1974. Her admission history reflects her telling the nurse at that time that she had a "urinary infection" and a "tube infection" for which she had been treated at Rikers Island. She saw the gynecologist initially on August 14 after complaining of pain and vaginal infection on August 13. Defendants ask the Court to draw the inference that Ms. Blackstock had no complaints of pain on admission and that she did not complain prior to August 13. The Court cannot draw this inference because the "114 Lobby A.M. Clinic Book" for the period July 19, 1974 through December 30, 1974 contains several notations of complaints by Paulette Blackstock with reference to this condition. On July 19, 1974, the nurse's note indicates "Paulette Blackstock = 'tube infection.'" There are no clinic notations for any inmates for July 20, 22, 23. On July 24, there is another note "GYN—Paulette Blackstock—tube infection PID Rx on Adm. [Pelvic Inflammatory Disease treatment on admission]." On July 25, the nurse noted "Paulette Blackstock—wants Dr. Saadat. Infection in tubes." Thus, the conclusion is inescapable that from the time she was admitted to Bedford Hills Ms. Blackstock repeatedly complained of gynecological distress, but did not see the gynecologist until August 14 when, according to the lobby clinic note of that day, she asked to be admitted to Sick Wing.

Another example offered by plaintiffs is Mary Kerr, a diabetic admitted on July 16, 1974 complaining of headaches. She told the nurse her eyes were "bad" and that she needed glasses. She was referred to an ophthalmologist on August 27, 1974 after seeing a doctor on August 9 for poor vision and swelling of her left eyelid. On August 27, the ophthalmologist made the diagnosis of "advanced diabetic retinopathy with retinal and iris neovascularization." In December 1974, her condition was determined to be untreatable and permanent blindness ensued. Plaintiffs argue that had she been given a prompt admission physical, the con-

dition might have been discovered earlier and might have been treatable. Although the condition might have been uncovered earlier, the subsequent history of Ms. Kerr's treatment precludes this Court from concluding that referral to an ophthalmologist six weeks earlier would have resulted in the condition being treatable.⁵

[5] The Court has considered the other examples cited by plaintiffs and in light of the evidence as a whole is unable to conclude that the disposition of the medical complaints cited resulted from the failure to perform a prompt admission physical, rather than from the more general problem of physician access discussed *infra*. Accordingly, the Court finds that plaintiffs have failed to prove that any medically significant consequences resulted solely from the failure to provide such an in-take examination. Although an admission health examination performed soon after admission is generally considered proper procedure, see ABA Commission on Correctional Facilities and Legal Services, *Medical and Health Care in Jails, Prisons and Other Correctional Facilities* 7, 16, 19 (3d ed. 1974), and no reason is given why such examinations cannot be performed within one week of an inmate's admission to Bedford Hills, the Court cannot hold, absent proof that infection was thereby introduced into the prison's population or that inmates consequently received medically harmful job assignments, that delayed performance of such a general examination violates the plaintiffs' constitutional rights. See *Collins v. Schoonfield*, 344 F.Supp. 257, 277 (D.Md. 1972).

Plaintiffs contend that chest x-rays, which are taken by an x-ray technician who visits the institution one day per week, are not reported promptly by the outside radiologist to whom they are sent for reading. However, the Court has concluded that insufficient evidence was adduced to establish that delays of over one month are other than isolated.

5. The subsequent history of this case is discussed in relation to referrals to outside consultants, section IV(E)(1) *infra*.

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Plaintiffs finally contend that use of x-ray machine and defendants' practice obtaining urine by catheterization expose inmate class to danger. The chest x-ray machine is antiquated and, as early as fall of 1973, defendants were advised to replace it. In April 1974, an inspector from New York State Department of Health advised the machine not in compliance with minimum state standards. Defendants obtained a new x-ray machine but as of the date of trial it was inoperable for use on a table.

Court finds that the x-ray machine is antiquated and potentially dangerous. Defendants, exposing inmates to this danger constitutes recklessness. See *Newman v. United States*, supra at 1323-24, 1331. More importantly, defendants' continued use of this machine for at least two years after they were advised of its danger and inadequacy constitutes deliberate indifference.

Expert witnesses for plaintiffs testified that catheterization of the urinary tract is a potential source of infection and not recommended procedure for obtaining urine specimens. It appears that defendants terminated this practice shortly before trial. Accordingly, the Court makes no finding relating to this discontinued procedure.

Sick Wing

Sick wing contains approximately 19 rooms and is used to house those patients who have elevated temperatures, defined as 101 or higher, have elevated blood pressure defined as diastolic 100 or more, have had epileptic seizures within the previous twenty-four hours, have been returned to hospitalization, and any other patient in the judgment of the medical staff is in need of closer observation. Of the 19 rooms, the four at the far end of the first corridor contain their own toilet facilities. These rooms, known within the institution as observation rooms, are used primarily by the mental hygiene department. They are also used to house patients transferred to the sick wing from segregation, or suspected of having an infectious disease, or

requiring easy access to a toilet. These rooms are locked except when used to house a patient who requires easily accessible toilet facilities. Sick wing rooms not containing toilets are kept unlocked.

The nurses make rounds of sick wing at least twice a day, in the morning and evening. In addition, Ms. Daly, the Nurse Administrator, testified that she instructed her nurses to conduct a mid-day round, and that when necessary a nurse dispenses medication in sick wing in the late afternoon.

Prior to Dr. Williams' arrival at Bedford Hills in September 1974, there were no regular physician rounds of sick wing and no patient in sick wing saw a physician unless a nurse placed her name on the physician's appointment list. Dr. Williams indicated that he would like to conduct regular rounds of sick wing each weekday afternoon, but he has not always been able to do so.

In addition to the medical staff's rounds of sick wing, the corrections officers are instructed to make rounds of the sick wing every half hour. When sick wing houses a patient who is in need of closer observation, rounds are to be made every fifteen minutes.

Despite the rounds conducted by the medical staff and corrections officers, plaintiffs contend that there is a serious inability to observe sick wing patients, compounded by the patients' inability to communicate their need for medical assistance. This is because there is no nurse's or corrections officer's station within the sick wing corridor itself; the nearest nurse is located on the first floor in the main ambulatory care clinic. Although a corrections officer is stationed on each floor of the sick wing, he or she is across a lobby from the patient corridors. At the entrance to the corridors are two doors—one heavy mesh and the other heavy wood with only a small opening—one of which is always locked. Although the testimony is unclear, it appears that at least on some occasions the sick wing corridors are closed off by the heavy wooden door. The guards cannot see into the rooms without walking up and down the corridors, and

there are no call buttons or other communication mechanisms in the patients' rooms. Thus, the only means of attracting the attention of the officers is to shout or bang on the door.

As an example of the consequences of these observation and communication problems, plaintiffs cite Rosezanna Vega who was locked in a sick wing observation room upon returning from Northern Westchester Hospital emergency room where she had received forty-four stitches in her face, eye, and left arm, for lacerations inflicted in a fight. The nurse's note indicates that she was "very sleepy." A nurse's note written an hour and fifteen minutes after Ms. Vega was placed in the locked observation room states: "Officer advised me that girl fell in her room. Found laying on floor next to toilet. Girl said she fell off toilet and hurt her head." Despite this incident, Ms. Vega was placed back in her bed unattended, the nurse checking on her only periodically.

Relative to the inadequacy of sick wing, some of the plaintiffs' experts testified to witnessing the following incident during their tour of the facilities: A woman suffering from either hysteria or a seizure was admitted by a nurse and placed on the second floor of sick wing. The nurse then left the girl, observed only by other patients, even though she was still in apparent distress. Similarly, the testimony of inmate witnesses recounts instances where it was necessary for sick wing patients to attract the attention of the corrections officers to some acute situation.

[7] The Court finds that plaintiffs have proven by the overwhelming weight of the evidence that there is a serious lack of communication and medical observation in sick wing. Principally because of this seriously inadequate observation and communication, all of plaintiffs' experts concluded that sick wing is inadequate. As one such witness put it:

If you place a person in observation, the person should be observed, not only just on a round basis but presumably more or less continuously.

If you have individuals with medical complaints in an environment which is secure or locked without a means by which they can communicate to a medical provider, where their closest medical provider, in the form of a nurse, is on another floor or in a different section, you are not providing the kind of medical coverage or the medical supervision or the medical overview that is essential and presumably required when you place that person in the room in the beginning.

Defendants counter that sick wing is meant to house only ambulatory patients. The evidence reveals, however, that sick wing in fact houses patients who are incapacitated and most in need of observation and access to medical care. As a result, and as the evidence clearly establishes, patient complications may, and sometimes do, go unnoticed for a period of time, causing patients in distress to suffer needlessly.

As early as October 1973, the Joint Commission on Accreditation of Hospitals recommended that Bedford Hills install nurse call mechanisms for patient rooms and toilet areas. Furthermore, memoranda between defendants and the Superintendent of Bedford Hills introduced in evidence reveal that they too believed that patients' inability to communicate a need for medical assistance rendered sick wing inadequate for observation purposes. Nonetheless, as of trial, the only response to this deficiency has been a plan to train some inmates as nurse's aides to provide supervision and assistance for those deemed to require it. Thus, defendants have made no real effort to remedy what they know to be, and the Court has found to be, a serious deficiency in sick wing.

In sum, it is clear from the evidence that inmates placed in sick wing suffer, unable to obtain assistance; defendants know this; and they have reason to know that the most dire consequences could follow. For example, defendants must know that if they place in sick wing for observation purposes an epileptic who has just had a seizure, there is a grave risk that while in sick wing

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The only defense they offered is that, as no patient's condition has been made because she was placed in sick wing. Williams so testified and on that basis that sick wing was not inadequate. Court disagrees. It is of the view that and not wait until an epileptic chokes to on her tongue in the course of a before it may act. Accordingly, the holds that the inadequacies in observation and communication subject seriously inmates to grave risk of harm, which sick wing constitutionally impermissible. Further, the Court holds that defendants' continued use of sick wing for care of seriously ill inmates, when knew that there was a serious lack of communication and observation, and knew could have known that in so doing they inevitably subjecting inmates to grave unnecessary risks, constitutes deliberate indifference.

The Lobby Clinic—Physician Access

The only medical facility at Bedford other than the Hospital Building is the lobby clinic, a small room on the first floor of the Residence Building 113.⁶ It is staffed by a nurse, twice daily, between approximately 7:00 and 8:00 A.M. and 7:00 and 8:00 P.M.

The lobby clinic is the "doorway" to the medical system and the principal means of obtaining medical care at Bedford Hills. Inmates who seek medical treatment or prescribed medication or have questions about any aspect of their medical care must go to the lobby clinic during its two periods of operation.⁷

One time lobby clinics were operated in each of the three residential buildings. This required two nurses to conduct the clinics. Some months prior to the trial, a single lobby clinic was established to serve all of the residential buildings.

An inmate whose prescribed medication must be administered at hours other than those of

The lobby clinic serves two broad functions: the administration of prescribed medication and sick call. The latter is a triage, or nurse screening, procedure whereby, theoretically, nurses first determine who requires treatment by a physician and then set priorities among those who require a physician visit. Dr. Williams testified that there are limited physician services relative to the demand so that he relies on the nurse screening procedure to see to it that those most in need of physician services get them.

Plaintiffs claim that the lobby clinic procedure is responsible for the principal deficiency in the Bedford Hills medical system, namely, substantially delayed or denied access to a physician for diagnosis and treatment of significant illnesses. As will be discussed hereinafter, the Court finds that plaintiffs clearly prove this claim by means of two avenues of proof: first, by introducing certain inmate medical records, plaintiffs prove sufficient instances of denied or substantially delayed access; second, by showing that certain defects in the lobby clinic operations, facilities and record keeping result in a failure to screen, plaintiffs prove that denial of access is inevitable. These two avenues of proof, each of which is independently sufficient to sustain plaintiffs' claim, will be considered *seriatim*.

A. Evidence That Some Inmates in Fact Were Denied Access to a Physician for Substantial Periods of Time

Plaintiffs introduced the medical records of thirty-five inmates who, they claim, were denied access to a physician for substantial periods of time.

One case cited by plaintiffs is that of Mary Ledgister. On January 28, 1975, the

lobby clinic reports to the main clinic. An inmate requiring medical attention when the lobby clinic is not operating may report her request to a corrections officer who will call the main clinic. She may then be directed there. In that event, she will be seen by a nurse.

nurse's note indicates that Ms. Ledgister complained of sharp stomach pains and pain on urination. She was not seen by a physician until April 2, 1975. Plaintiffs contend that she complained at the lobby clinic numerous times during this interval. The Court has examined the lobby clinic notebooks⁸ for this period, but has found no complaint at all beyond that of January 28. Dr. Williams testified that Ms. Ledgister had an I.U.D. and that abdominal pain frequently accompanies such a device. Although plaintiffs argue that there is no evidence that the nurses knew she had an I.U.D., her admission history reflects that she had one inserted in January 1973. In light of all these facts, the failure to respond to Ms. Ledgister's complaint was reasonable.

Another example cited by plaintiffs is that of Paula Herbert. She complained on January 18, 26, 28, 29, 30, 31 and February 2, 3, 4, 5, 6, 7, 8 of a nodule growing on her nose, a skin rash, and shortness of breath and requested to see a physician. She was not seen by a doctor until February 14, despite the fact that on many occasions the lobby clinic nurse had put a number of stars next to her name in the lobby clinic book.

Another example cited by plaintiffs is that of Yvonne Lee who was admitted to Bedford Hills on April 23, 1975. At that time, Ms. Lee informed the nurse of her history of urethral surgery and the nurse noted that she was difficult to catheterize. Ms. Lee testified that two days thereafter she began asking to see a doctor. Her chart indicates complaints of urinary distress—flank pain and sensation of need to void, or "kidney pain,"—on May 2, 3, 4, 6, 7, and 11, 1975. In each instance, she was given "nebs" for pain and told she was on the doctor's list. The first time she saw a physician was on May 13, 1975 when she was examined by the gynecologist. On May 20, 1975, she was given a physical examination as part of the admission health

screening. Ultimately, Ms. Lee was diagnosed as having a fistula for which she underwent surgery.

Theresa Durante was admitted to Bedford Hills on July 31, 1974. On admission she informed the nurse that she suffered from long, irregular periods and that she sometimes passed large clots. Ms. Durante testified that she complained three or four times a week thereafter at the lobby clinic about her menstrual problems. The lobby clinic notebooks show that she complained on August 13, 1974 of a long period with a heavy flow. On August 21 and 28 and September 12, there are noted additional requests for an appointment with the gynecologist. When Ms. Durante was seen by a physician on August 23 and September 29 for an unrelated knee injury, she repeated her complaints concerning her menstrual period. Each time the physician noted a referral to Dr. Saadat for her gynecological complaints. She was not seen by the gynecologist until October 18, 1974, when he diagnosed the condition as menorrhagia (excessive menstruation) and prescribed birth control pills to control her menstruation.

Louise Johnson, an inmate who had previously suffered from toxoplasmosis (parasitic infection) of the eye, complained of eye problems at the lobby clinic on January 27, 29, 30 and February 2, 3. On February 4, her previously scheduled appointment with an outside ophthalmologist was moved up to February 10 from February 13. She was not seen by any physician in the interim, even though the lobby clinic nurse had noted "Emerg." next to her complaint in the lobby clinic book on January 27, 1974.

The inmate charts introduced at trial are replete with letters from inmates requesting to see a physician and contending that they had made numerous requests at the lobby clinic. In addition, in the above described cases of Paula Herbert, Yvonne Lee, Theresa Durante and Louise Johnson, the record supports plaintiffs' contention that

8. The contents, use and usefulness of these notebooks is discussed in section III(B)(3) *infra*.

here are significant delays—anywhere from two weeks to two months—in obtaining access to a physician through defendants' lobby clinic procedure.⁹ On the other hand, in a number of instances, plaintiffs' contention is not substantiated by the record. An example is that of Mary Ledgister where the record reflects an isolated complaint of a common problem. In such cases of very minor common ailments, the Court is willing to defer to defendants' treatment and deem insubstantial any delays relating hereto. Nonetheless, the Court finds that plaintiffs proved sufficient instances of substantial delays in obtaining access to a physician for needed medical attention to refute the contention that such delays occur only in isolated cases.

Furthermore, it is reasonable to conclude that plaintiffs may have been unable to prove additional instances of delay solely because defendants' medical records are so haphazard and incomplete. For example, in order to determine if and when an inmate complained at the lobby clinic, it is necessary to examine the individual lobby clinic notebooks¹⁰ because very few lobby clinic notes are transferred into the patients' charts. This requires an examination of at least three different notebooks for any given inmate on any given day. Even then, one cannot be certain that an inmate did not make a complaint because if the inmate were in segregation or in the hospital or, for part of the period covered by this lawsuit, in another residence area, other notebooks would have to be consulted. Furthermore, all of the above examinations may be futile for, as the Court finds *infra*, not all inmate complaints are noted in the lobby clinic notebooks. Thus, while plaintiffs have proven sufficient instances of denied access to sustain their claim, the Court suspects that other unproven instances have occurred as well.

See also the medical record of Paulette Blackstock discussed in relation to Admission Health Screening, section I *supra*.

B. *Evidence that the Lobby Clinic Operations, Facilities, and Records Cause a Failure in Screening (Which Must Result in Substantially Delayed or Denied Access)*

1. *Defects in Screening Caused by the Lobby Clinic Operating Procedure*

The lobby clinic procedure is initiated by a corrections officer from Building 113 calling for the lobby clinic, one residence corridor at a time. The inmates from that corridor then line up in front of the lobby clinic on a "first come, first served" basis. There is no differentiation between those who have come for prescribed medication and those who have medical complaints. The first operational defect, then, is the combining of the medication and screening functions simultaneously in one clinic without providing for any system of initial priorities.

Secondly, this combining of functions also means that one nurse has to attend to an overwhelming number of patients in too short a period of time. Many of these patients come to the lobby clinic only to receive prescribed medication. Prior to September 1975, the lobby clinic nurse dispensed as many as 200 prescribed medications. Since September 1975, many inmate medications have been distributed in bulk, so the number of inmates receiving their medication through the lobby clinic has been reduced to approximately 50 a day. Nevertheless, this figure, plus the 15 to 30 inmates with medical complaints, adds up to approximately 65 to 80 patients to be seen within the brief period the clinic is open. Thus, it was estimated that the entire exchange between the nurse and an inmate seeking medical assistance is concluded in 15 to 20 seconds.

A third operational impediment to screening is the disorder of the line. The inmates

10. The discussion that is to follow should be considered in relation to the fuller discussion of lobby clinic notebooks in section III(B)(3) *infra*.

maneuver for priority on the line and interrupt each other. Thus, the nurse/patient encounter occurs under not only hurried, but also disorderly, circumstances. Therefore, the encounters are brief and frequently chaotic—hardly conducive to performing meaningful medical evaluations.¹¹

2. Defects in Screening Caused by the Physical Limitations of the Lobby Clinic

All of the plaintiffs' expert witnesses agreed that a minimally adequate system of nurse screening requires physical contact between a qualified medical provider and patient, in private, with minimal diagnostic measurements such as a blood pressure reading, and a physical examination of the locus of the complaint. They found the lobby clinic inadequate for the performance of these tasks.

Likewise, Dr. Williams himself, in November 1975, promulgated a directive, entitled "Procedures For Screening," which lists the requirements for nurse screening as follows:

- "1. History of current complaint
2. TPR [Temperature, Pulse, Respiration]
3. Blood Pressure

11. A rather vivid description of the lobby clinic procedure is recorded by the nurse operating the evening clinic on August 1, 1974:

Evening count was cleared [at] 9:13 PM [and] then Clinics had to be called 10 at a time. Stagger system so there'd be a gap to wait—then late comers would come in any old time [and] it was like a circus the system is no good, because now 3 or 4 corridors were overlapping each other. I had to refer from [one] corridor to another as girls came [from] either 113ab also 112ba 113cd 112CD all at the same time. 2 wks ago had to call a girls name to find out where she was [and] 2 wks ago it took till after 11 PM to do 114ab. Tonite it would have been longer for 114cd had a real long list. I called Miss Clement—she allowed 2 only at a time just this once to come down for med[ication]. Is it still my fault because I can't rush something like med[ication] lo[tions] [and] creams to be done in short space

4. Simple Exam. Re: complaint, Rx and Disposition"

Thus, plaintiffs and defendants are more or less in agreement as to the minimal diagnostic procedures required for adequate screening. The physical structure of the lobby clinic, however, is not conducive to performing even these minimal screening procedures.

The lobby clinic is a small room containing two storage cabinets, a table and a chair. The door to it remains locked and contains a barred, cashier's type window. The sole nurse is stationed inside the room behind the locked door, and a corrections officer is stationed just outside. Each inmate approaches the window in turn and gives her name and the purpose of her visit. There is no opportunity for private consultation with the nurse. If the inmate is there to receive medication, the nurse hands it to her through the window. If she has a medical problem for which she seeks treatment, the nurse asks some basic questions to determine the nature of the complaint, its severity and duration. No physical examination can be conducted because inmates are not permitted inside the lobby clinic while the medications are out. The most the nurse can do at this time, aside from making routine inquiries, is take the inmate's temperature and pulse.

of time. Mrs. Warne or Miss Clement should witness the clowning that goes on for serious assignment as ours from beginning to end—I eve clinic [and] see how the time goes. Maybe a better sol[ution] will be devised.

Why in blazes do you not give them the damned stuff to hold [and] use [and] not take up important nursing time. I can't see polluting a body this way then trying to ease the burden it took. . . . Daly—please ask them to do the former system.

Exhibit 74f, Daily Report Book, July 25, 1974 to September 8, 1974, August 1 entry. (Emphasis in original).

In addition, the following notation appeared in the margin of the above quoted lobby clinic note:

Started Clinic 9:13 tell me how to give all in just about 3/4 hr.

on the basis of these limited findings, without the benefit of the patient's report, physical examination, a blood pressure reading, or even a private consultation with the inmate, the nurse must determine whether to administer medication from the existing orders (for example, non-prescription medications such as antihistamines, aspirin, or antacids for complaints of colds, headaches, menstrual cramps, toothaches or stomachaches), or refer the inmate to a physician.¹²

It is clear to the Court that as a result of operational defects and physical limitations of the lobby clinic, the nurse cannot conduct any meaningful evaluation of an inmate's medical complaint. As a result, there must be a failure to screen, which, in turn, must result in a denial of access. Further, even if the lobby clinic nurse were able to conduct an adequate medical evaluation, it would be for naught, for a failure to screen also results from defendants' reliance on the inadequate lobby clinic records for determining inmate access to a physician. The Court now turns to a discussion of this additional defect in screening.

B. Fatal Defect in Screening: Nurse Record Keeping

When she examines a patient, the lobby clinic nurse records certain observations in what are known as lobby clinic notebooks. Based on these notebooks and her brief encounter with each inmate, the nurse draws up a physician appointment list. This list contains the name of every inmate who is asked to see a doctor, without any differentiation of those whom the nurse believes should see a doctor and without enumerating the order in which they should be seen. Such a list is drawn up by each of the five or six nurses who staff the two daily sessions of the lobby clinic during the course of a week. Then each examining nurse, rather than scheduling the physician

appointments herself, turns over the above described list to another nurse, Ms. Geyser, who determines the priorities for the available physician time and schedules appointments with the inmates. These undifferentiated lists of no guidance to Ms. Geyser, who conducts the morning clinic herself only once or twice a week; and the evening clinic nurses are not available when she draws up the physician appointment schedules. Consequently, for guidance in setting priorities she must rely on patient records—perhaps the patients' charts, but most likely the lobby clinic notebooks.

The lobby clinic notebooks are the only records kept of the interactions at the lobby clinic. Between the five or six different nurses who may staff the morning and evening lobby clinics, there is one lobby clinic notebook for the morning clinic, but separate notebooks for each of the nurses who take turns working the evening clinic.

The function of the lobby clinic notebook is to maintain a record of the names of patients seen and the nature of their complaints. In practice, however, some typical entries include solely the patient's name and a one word description of the complaint, such as "throat" or "stomach" or "headache." Others include only the treatment or advice given. Still others will list only the inmate's name followed by a doctor's name. Furthermore, given all of the operational difficulties discussed earlier, particularly the length and disorder of the lobby clinic line and the extremely limited time the nurse has to get through it, the Court is convinced that not all inmate medical requests are even noted in the lobby clinic notebooks.

Ms. Daly characterized the lobby clinic notebooks as mere "reminders." The Court cannot accept this characterization, however, for it is abundantly clear that Ms. Geyser relies upon these notebooks to a

There was some testimony that should the nurse feel that a further examination or blood pressure reading, etc. is required, she will instruct the inmate to return to her corridor and

wait until all medication is dispensed. The nurse can then recall her and examine her within the lobby clinic room. In practice, however, this procedure appears to be rarely used.

great extent, if not exclusively, in drawing up the physician appointment lists.

However, the Court finds that the lobby clinic notebooks are grossly inadequate for this task. Therefore, reliance upon them when they are inadequate for this purpose results in a failure to screen, and in turn, in denied or substantially delayed access.

In sum, then, the evidence of numerous defects in the lobby clinic proves that the inevitable result of the lobby clinic is a failure to screen, which in turn inevitably results in unnecessary suffering because of denied or substantially delayed access to a physician for diagnosis and treatment of physically distressing illnesses. Defendants have not refuted this evidence. On the contrary, plaintiffs have reinforced this evidence by proof of a sufficient number of concrete instances of such denied or delayed access. Furthermore, in light of the Court's finding that the lobby clinic precludes screening, it is likely that there are other instances of denied access, proof of which was prevented by the gross inadequacy of defendants' medical records system.

Courts have held that a sick call procedure for prompt referrals of those in need to a physician is constitutionally required. See, e.g., *Newman v. Alabama*, *supra* at 1331; *Jones v. Wittenberg*, 330 F.Supp. 707, 718 (N.D. Ohio 1971), *aff'd sub nom.*, *Jones v. Metzger*, 456 F.2d 854 (6th Cir. 1972). Similarly, as previously noted, numerous courts have held that substantially delayed access to a physician for incidents of illness violates the Constitution. For example, in *Miller v. Carson*, *supra*, the court found shocking a two-week delay in access to a physician for diagnosis and treatment of an earache. Likewise, this Court is constrained to find a four week delay in treating Ms. Blackstock's known gynecological disease,¹³ to state one example, equally shocking. If the failure to insure reasonably prompt referral to a physician for necessary medical care is unconstitutional, "the deficiency which spawns the infirmity," the lobby clinic, is also unconstitutional. *Newman v. Alabama*, *supra* at 1331.

Accordingly, the Court holds that the lobby clinic, as a means of access to a physician, deprives plaintiffs of necessary medical care and therefore constitutes cruel and unusual punishment in violation of the eighth and fourteenth amendments to the Constitution.

Furthermore, the Court not only finds that the lobby clinic fails as a screening mechanism, but also finds that it should have been readily apparent to anyone with knowledge of the clinic's procedures and facilities that the clinic could not possibly succeed at its intended function.

As health care providers, defendants are responsible for the physician referral operation. However, none of the defendants except Ms. Daly had witnessed the lobby clinic in operation, and she had not observed it in the last year. Dr. Williams had never seen the lobby clinic room and neither he nor Dr. Frost had ever seen the lobby clinic notebooks. Thus, it is apparent that the defendants failed to inform themselves of the clinic's procedures, facilities and operations, choosing instead to rely completely on the lobby clinic nurses. Had they informed themselves of the lobby clinic's facilities and procedures, they would have known that the nurse screening upon which they relied could not be properly performed in the lobby clinic and that seriously inadequate screening would inevitably result.

Therefore, the Court holds that the defendants' failure to observe the lobby clinic procedure and insure its adequacy as a sick call/physician referral procedure amounted to reckless failure to inform themselves whether plaintiffs' medical needs could be met in this fashion. The Court further holds that this constituted deliberate indifference to whether or not plaintiffs' medical needs were in fact being met.

IV. Follow-Up Care

In addition to providing for initial access to a physician, a health care delivery system should provide for follow-up care whereby

13. See note 9 *supra*.

doctor's orders for diagnostic tests and other treatment will be followed. Plaintiffs contend, however, that the medical system at Bedford Hills fails in several respects to provide adequate follow-up care. First, they contend that ordered laboratory tests sometimes are not performed, certain test results are routinely delayed, and others are not reviewed and followed-up. Second, they contend that follow-up appointments with Bedford Hills physicians are not scheduled. Third, they contend that the chronically ill are not adequately monitored and observed. Fourth, they claim that medically harmful work assignments are not changed. Finally, they contend that they are denied referrals to outside specialists for diagnosis and treatment and elective surgery.

A. Laboratory Services

1. Failure to Perform Tests

Laboratory testing is an important diagnostic tool. At Bedford Hills, there is a laboratory technician responsible for taking blood and urine specimens, ear, nose and throat cultures and various other specimens for analysis. She performs some routine testing in the prison laboratory. Other tests are performed at an outside commercial laboratory. Pap tests and venereal disease tests are sent to a state laboratory in Albany.

When a doctor orders a laboratory test, a notation is generally made in the laboratory book. The laboratory technician testified that she will perform the test on the date ordered by a physician when he so specifies; otherwise, she fits it into her regular schedule. The laboratory technician testified that generally she will telephone the corrections officers on the corridors or will send them a typed list requesting them to send down the women for whom laboratory tests are scheduled.

As evidence of nonperformance of ordered laboratory work, plaintiffs point to several of the sixty-four inmate medical records available to them. For example, Paulette Blackstock was treated for a bladder infection on May 21, 1975. Dr. Wil-

liams ordered that a follow-up urine culture and sensitivity test be performed twenty-four days later, on June 14, 1975. Ms. Blackstock's record contains no indication that this follow-up test was performed. Similarly, Rebecca Booker's follow-up urine culture and sensitivity test, which Dr. Williams ordered on March 26, 1975 to be performed thirty days later, was never performed.

A blood count was ordered for Paulette Blackstock by the gynecologist who was treating her for vaginitis. The laboratory technician noted in her chart that the order was not entered in the laboratory book, so she (the laboratory technician) did not discover it until September 6, 1975. She performed the test on September 27, 1975.

On June 21, 1975, Frances Chacon, who had a history of rheumatic fever and high blood pressure, saw a physician for headaches and neck and shoulder pain. In addition to medication, he ordered a blood count. As of September 24, 1975, there was no record that the test had been performed, despite Ms. Chacon's continual symptomatic complaints.

Immediate thyroid tests were ordered for Patricia Narganes on December 24, 1974. These tests were not performed until August 12, 1975, after another doctor reordered them.

Defendants countered that the women do not come to the laboratory when called and thus the failure to perform diagnostic tests is due to a lack of cooperation from the plaintiff class. For example, defendants point out that Frances Chacon repeatedly failed to come for laboratory work in the fall of 1974. However, defendants introduced no evidence to establish that in the particular instances cited by plaintiffs the women failed to appear for scheduled laboratory work. Moreover, the laboratory technician testified that the women sometimes stated that they had not been notified of the tests by the corrections officers. Thus, the Court cannot conclude that these specific failures to perform ordered diagnostic work resulted from any lack of cooperation on the part of the women.

On the other hand, the Court cannot conclude from the instances cited by plaintiffs that the failure to perform diagnostic tests is widespread and chronic. Rather, it is apparent from an examination of the medical records as a whole and the testimony of the laboratory technician, who favorably impressed the Court, that the vast majority of laboratory work is performed relatively promptly. Nevertheless, the Court finds that although the failure to perform laboratory work is confined to relatively few instances, such failures occur repeatedly. These failures are caused by and are the necessary result of a variety of factors including poor record keeping whereby the laboratory technician is never informed of the orders, and lack of notice to the patients of the scheduled work.¹⁴

2. Delayed Test Results

A problem of a different order is presented by pap tests and venereal disease tests which are sent to the state laboratory in Albany; the lab reports are not returned for a substantial period of time.

For example, a syphilis test for Helen LaVore was taken on December 13, 1973, but the result was not reported until February 5, 1974. Another sample was taken on March 28, 1974, but not reported until May 1, 1974. Ms. Daly and Dr. Frost both noted problems with regard to the Albany lab's processing of syphilis tests.

Dr. Saadat, the gynecologist, testified that pap smear results generally are not reported for four or five weeks, although in his private practice he receives pap smear reports within one week. In some instances, the pap reports indicated that they could not be read for cancer due to, for example, severe inflammation and blood. However, plaintiffs have shown that repeat tests sometimes were not performed for inordinate periods of time.

The Court concludes that the delay in reporting venereal disease tests and pap tests, standing alone, does not rise to the level of a constitutional violation which

would require judicial intervention. This conclusion is based on a number of factors. First, the doctors at Bedford Hills are aware that they will not receive the results of these tests for at least one month. Thus, the delay in reporting cannot be deemed to constitute a failure to carry out a physician's orders. If in a given case a physician believes that delay will be detrimental to his ability to treat a patient, he can arrange for different laboratory services. When viewed from this perspective, plaintiffs' claim is, in reality, against the doctors, as opposed to those responsible for carrying out the doctors' orders, for knowingly ordering tests from laboratories which are notoriously slow in reporting results. However, plaintiffs have failed to prove sufficient instances where the delay was detrimental to the patient or where it would have been incumbent upon the physician to send the tests to a laboratory which would have reported the results promptly. Accordingly, the Court finds that the proven delays do not amount to a constitutional violation.

3. Abnormal Test Results Not Followed

Plaintiffs contend further that even after laboratory reports are received, significantly abnormal results are not followed-up with necessary treatment. There was testimony that normal laboratory test results are merely filed in the patient's chart without being brought to the attention of the ordering physician. Abnormal test results are underlined in red and placed in a folder to be reviewed by the doctor ordering the test. An extremely abnormal test requiring immediate action, for example a high blood sugar test in a diabetic, is brought to the attention of any physician present or, in lieu thereof, a nurse.

As an example of the failure to follow-up laboratory reports plaintiffs cited the case of Elizabeth Powell who was seen in February, 1975 for a discharge from a lesion in her right breast. On February 17, 1975, a

low-up care are discussed more fully in section IV(B) *infra*.

14. These administrative and communication failures that interfere with the delivery of fol-

ogy sample and a culture of the discharge were taken. The culture revealed infection, but the cytology test was regarded as too scant to evaluate. Plaintiffs claim that a repeat cytology sample to test for cancer was never taken. However a review of Ms. Powell's chart reveals that she suffered from an infection which was responding to the treatment given. Moreover, a mammogram performed on May 5, 1974, was normal. In light of the record as a whole, the more reasonable inference is that the treating physicians determined that Ms. Powell probably did not have cancer and a repeat cytology was not necessary.

Another example offered by plaintiffs is the case of Ms. Vasquez. A liver test (SGOT) performed on Ms. Vasquez on September 13, 1974, was markedly outside normal limits and precipitated a telephone call from the hospital to Bedford Hills the next day. The hospital's note reveals that a physician was notified and he ordered that a physician's appointment be made as soon as full test results were available. No physician visit was made. On October 16, 1974, a nurse advised that Ms. Vasquez had bruising on her arm and complained of a "diseased liver." Ecchymosis (bruise) was again noted on September 1, 1974. She was admitted to the hospital and Dr. Williams ordered a repeat liver test on November 4, 1974, but this was not performed. This order was repeated on November 20, 1974 and by another doctor on November 27, 1974. Ms. Vasquez was not notified. Consequently, the test could not be performed until December 3, 1974. Her liver test was normal.

Although Dr. Williams testified with respect to the abnormal liver test of September 13, 1974, he did not commence serving at the institution until October, 1974. The more reasonable inference, therefore, is that the September 13th test was not followed-up until Ms. Vasquez complained about one month later of bruising of the extremities, at which time Dr. Williams took over her treatment. This is another example of the delayed response to abnormal test results plaintiffs

cite the case of Mary Reed. On December 10, 1974, Ms. Reed complained of vomiting blood. When she was seen the following day by Dr. Williams she also described mid-stomach pains. He ordered that her stool be tested for blood. He reviewed the results, which were positive, when received on December 21, 1974, and he ordered that she be scheduled for an examination. He repeated that order on January 15, 1975. On January 24, 25 and 27 she complained of abdominal pain. On January 27 she was finally seen by Dr. Williams who formed the tentative diagnosis of an ulcer and ordered a GI series. In this instance, the abnormal lab results were reviewed but the examination ordered twice by Dr. Williams was not scheduled for over one month and then only after repeated complaints of pain.

Another inmate, Geraldine Strong, had a blood test on July 9, 1975 showing anemia. The result was neither noted nor treated until September 5, 1975.

As with the failure to perform laboratory tests ordered by a physician, whether abnormal laboratory reports are followed-up is a hit-or-miss proposition. The vast majority of laboratory reports are normal, and cultures which reveal infection are generally followed-up. However, in some instances, abnormal test results may not be followed-up for one to two months. This is of grave concern because the laboratory results which are not followed-up are those revealing possibly serious illnesses. The Court finds that, as with the non-performance of laboratory tests, these instances may be relatively few in number but they occur repeatedly as a result of administrative, communication and record keeping problems.¹⁵

B. Follow-Up Medical Appointments

Plaintiffs contend that when a physician orders a patient returned for a follow-up visit, an appointment is not always scheduled for the date ordered or within any one of the next five working days. In support of their contention, plaintiffs introduced

15. *Id.*

statistics for the period October, 1974 to July, 1975, during which an average of 22.2 follow-up appointments were ordered each month. Of these, an average of 9.3 were not conducted on the ordered date or within five days thereafter.

In addition to these statistics, plaintiffs cite the medical records of specific Bedford Hills inmates who, they contend, did not receive follow-up appointments. For example, Carmen Garcia was referred to the gynecologist by a general practitioner on January 21, 1974. She was not seen by him until March 18, 1974 when he prescribed treatment for a vaginal infection and ordered her return in two weeks. She did not see the gynecologist again until May 8, 1974 at which time he treated another vaginal condition and ordered her return in three weeks. She was seen precisely three weeks later, but no further treatment was required. On July 25, 1974, she wrote a letter requesting a leave to visit an outside gynecologist because, she stated, she had failed to gain access to Dr. Saadat, the Bedford Hills gynecologist. On August 2, 1974, she was seen by Dr. Saadat and treated for a vaginal discharge. He ordered her return in three weeks. She was not seen by him until January 16, 1975 at which time she had no gynecological pathology.

Minnie Wrenn was seen by the gynecologist on September 12, 1974 for abdominal pain. He diagnosed her as having a small, myomatous uterus and ordered her returned in two weeks. However, she was not seen by him again until August 18, 1975, eleven months later. Her condition had persisted so he ordered her returned in four weeks. She was seen again within three weeks and was referred to an outside doctor for a consultation regarding a possible hysterectomy.

Both of the individuals in the two cases cited above suffered from demonstrable pathology causing discomfort and distress. Yet in each case, some of the doctor's orders

for follow-up visits were followed to the letter, while others were ignored. This discrepancy does not result from any lack of physician concern or diligence. For example, in Ms. Wrenn's case, Dr. Saadat's notes indicate that he was concerned about her condition and wished to follow her carefully. Rather, as with the failure to perform laboratory tests and the failure to follow-up abnormal test results, there appear to be failures in administration and communication which render the delivery of prescribed follow-up care a hit-or-miss proposition. These administrative and communication failures will now be discussed.

One problem is that inmates are not given advance notice of laboratory work or physician's appointments; nor are they given the results of laboratory work. Rather, on the morning of an appointment, the medical clerk calls a lobby officer who in turn calls the appropriate corrections officers to notify the women who will be seen that day. As a result, there are many opportunities for communication failures and conflicts in scheduling. For example, gynecologist appointments may have to be cancelled because women are experiencing their menstrual period. The defendants did not testify to any attempt to consult the women concerning their availability for appointments on given days or to notify them in advance.

It also appears that correctional orders, on occasion, interfere with medical scheduling. Ms. Blackstock was scheduled to see Dr. Saadat on September 6, 1974 by his order. The nurse noted that the inmate was "seg locked on corridor" and that the appointment should be rescheduled. It was rescheduled for September 27, but Ms. Blackstock did not appear; she was in the medical building receiving new admission testing on that date. Although she presumably was called that morning by Dr. Saadat's office, it is reasonable to infer that the message did not reach her.¹⁵ She did not

And since Dr. Saadat sees patients only in the morning, it is likely that Ms. Blackstock was in the laboratory when he called and therefore

16. Since new admission testing includes a fasting battery of tests which presumably is done in the morning, it is probable that Ms. Blackstock was in the laboratory in the morning.

Dr. Saadat again until December 5, 1974. Lewin's eye record contains the "9-20-74 called down to see Dr. Ad- (optometrist). (Seg. Locked)." Although defendants contend that medical care is not denied to those in segregation, it is clear that such care is limited to nurse visits and responses to acute situations, with other treatment deferred.¹⁷

Follow-Up Laboratory Services and Follow-Up Medical Appointments—Court's Conclusions

With respect to laboratory services, plaintiffs claim denial of follow-up care in three ways: (1) failure to perform tests; (2) delay in reporting test results; and (3) failure to follow-up abnormal test results. As to the second of these, the Court has already found that plaintiffs failed to establish their claim.¹⁸ As to the first and third, the Court so far has found that plaintiffs have shown several instances of failure. With respect to the failure to schedule follow-up medical appointments, the Court finds that plaintiffs have proven that this occurs with great frequency. The Court now turns to an examination of the legal significance of plaintiffs' proof of failures to provide follow-up care in laboratory services and medical appointments.

As found earlier, the proven failures in follow-up laboratory services and medical appointments more often than not have a common cause: poor administration and poor communication between the medical staff and the inmates. As a result of these administrative and communication problems, the Court has found that the laboratory technician is not informed of test results, lab results are not brought to a

physician, whether did not get the message or could not have kept the appointment anyway.

Defendants' lobby clinic notebooks contain nurses' notes of some inmate complaints and responses, but it is not clear that inmates are to be seen following their release from segregation.

See section IV(A)(2) *supra*.

Almost all of these deficiencies could be alleviated by one simple expedient: direct com-

munication with physician's attention, inmates are not informed of laboratory tests, test results, or physician appointments, and physician appointments are either not scheduled or scheduled at times which conflict with inmate commitments. These failures in turn result in inefficient use of physician staff and failure to comply with physician orders.¹⁹

[9, 10] The failure to carry out physician-ordered treatment is not constitutionally tolerable. See, e. g., *Campbell v. Beto*, *supra*; *Martinez v. Mancusi*, *supra*; *Tolbert v. Eyman*, *supra*; *Edwards v. Duncan*, *supra*; *Derrickson v. Keve*, *supra*. An individual prisoner complaint which alleged that the prisoner waited one month to see a doctor, and thereupon the laboratory work the doctor ordered was either not performed or the doctor was never informed of the results, would certainly state a claim for relief. See *Bishop v. Stoneman*, *supra*. The question here is whether a system which due to failures in administration and communication, repeatedly produces that sort of result for a relatively limited number of individuals is equally repugnant to the Constitution.

In *Newman v. Alabama*, *supra* at 1331, the court stated:

A fourth debility under which the APS was found to labor was the presence of disorganized lines of therapeutic responsibility. An ineluctable by-product of this condition is that treatment prescribed by doctors is not administered by medical subordinates. Since the failure of prison officials to comply with doctors' orders has occasioned judicial disapprobation, see *Martinez v. Mancusi*, *supra*; *Sawyer v. Sigler*, *supra*, a medical organizational

breakdown in communication between the medical staff and the inmates they serve. If inmates were scheduled for laboratory tests and follow-up appointments and given an appropriate pass when they were to see the doctor, the inmates would be more likely to receive the ordered care. Other means of dealing with these problems could be devised, if this should prove impractical.

system pregnant with the possibility of noncompliance is similarly amenable to attack.

Similarly, in this case, although the proven instances of failure in follow-ups with respect to laboratory services and medical appointments may be few in number, cumulatively they create the impression of a system which fails to insure that ordered treatment is, or can be, delivered. Thus, despite the number of doctors and nurses theoretically available, the built-in administrative and communication impediments to carrying out doctors' orders insures that there inevitably will be instances of delayed diagnosis and treatment and, ultimately, needless inmate suffering. One or two oversights may be negligence. But a system which has a built-in guarantee of repeated oversights surpasses negligence and is recklessly inadequate.

Further, the consequences of failure in any given case may be grave. An individual suffering from serious disease may go undiagnosed and untreated because ordered laboratory work is not performed, an abnormal result is not timely followed-up, or an ordered reappointment is not made. This prospect, considered in conjunction with the Court's previous finding that plaintiffs suffer delay in obtaining initial access to a physician, leads to the conclusion that the procedures for initial access and follow-up care contain the potential for disaster. That plaintiffs could prove no deaths or permanent disabilities resulting from the specific instances of failure does not alter this Court's view of the case. The Court reiterates that it need not postpone acting until a catastrophe occurs.

In summary, then, the Court concludes that due to administrative and communication difficulties the system for providing follow-up laboratory services and medical appointments fails to insure that all doctors' orders are carried out, results in unnecessary prolongation of pain, and contains within it the potential for dire consequences. Moreover, since the physicians are forced to repeat orders that are not carried out, they are aware that the system

for providing ordered care repeatedly fails. Accordingly, the Court holds that the system for delivering follow-up laboratory services and medical appointments is unconstitutional and that defendants' knowing reliance upon such a clearly inadequate system constitutes deliberate indifference.

C. Follow-Up Care for Chronic Illness

A number of the prisoners at Bedford Hills have chronic illnesses such as hypertension, asthma or lung disease. These illnesses require monitoring because they may become acute. Recognizing this, Dr. Williams considers the treatment of hypertensives, for example, to be high priority. Plaintiffs contend, however, that Bedford Hills fails to carry out a systematic course of evaluation and treatment of the chronically ill, particularly hypertensives.

In each of the hypertension cases in the medical records introduced at trial, doctor's orders for monitoring of blood pressure were not carried out. Luz Pizarro suffered from hypertension and, on February 21, 1975, Dr. Williams ordered that her blood pressure be taken twice a week for three weeks. It was taken twice during this period—once on February 25 and again on March 17 after she blacked out or had a seizure. Dr. Williams repeated the order on March 19, but no blood pressure readings were recorded during that three week period. Blood pressure readings ordered for Lucy Jackson, a fifty-eight year old woman with a history of hypertension, were likewise never taken. Other instances of failure to take ordered blood pressure readings are contained in the charts of Frances Chacon and Gladys Dieppa.

Dr. Williams admitted that blood pressures he had ordered were not taken. He attributed this to lack of staff time. It appears this also may result from the inability of the lobby clinic nurse to take blood pressure readings, a fact of which Dr. Williams was unaware.

Plaintiffs further contend that the failure to develop a treatment for hypertensives also results in lapses of prescribed medication, as in the case of Ms. Jackson.

Ogwu had ordered that Ms. Jackson be given Diuril until Dr. Williams could develop a plan for treating her high blood pressure. The Diuril was discontinued on April 1, 1975, although Dr. Williams did not take her her treatment until August 15.

[11] As stated earlier, the failure to carry out physician-ordered treatment is not constitutionally tolerable. See, e. g., *Campbell v. Beto*, *supra*; *Martinez v. Mansi*, *supra*; *Tolbert v. Eyman*, *supra*; *Edwards v. Duncan*, *supra*; *Derrickson v. Eve*, *supra*. Since failure to take physician-ordered blood pressure readings and to administer prescribed medication are just other instances of failure to carry-out physician orders, the Court holds that these too are not constitutionally tolerable. Furthermore, defendants' tolerance of these continued failures constitutes deliberate indifference.

Plaintiffs also contend that defendants fail to record the administration of each dose of medication to the chronically ill and this hampers proper treatment because one cannot know if continuation of symptoms results from ineffective treatment or from failure to follow the prescribed treatment. The Court cannot agree with this contention because in its review of the medical records, it has found numerous instances where the failure to take prescribed medication was recorded. Moreover, it would seem that one could determine just as effectively whether or not prescribed treatment was followed by noting whether any medication remained after the prescribed period terminated. Accordingly, plaintiffs have failed to prove their contentions with respect to the alleged failure to record administration of medication to the chronically ill.

Defendants have attempted to systematize their management of chronically ill prisoners. Dr. Williams has taken primary responsibility for the care of illnesses such as diabetes, hypertension and epilepsy. He has instituted a card file of those inmates suffering from chronic diseases, although it was not yet operative at the time of trial. Dr. Frost also testified that he hopes to

introduce "the problem oriented medical record" at Bedford Hills in the future.

Since matters of medical judgment generally do not raise a constitutional question absent gross departure from recognized medical standards, see *Estelle v. Gamble*, *supra* at 103-108, 97 S.Ct. 285, this Court will not decide whether the chosen course of evaluation and treatment of the chronically ill in this case was appropriate. While the Court cannot and does not sanction defendants' unconstitutional failures to carry out physician orders, given that plaintiffs did not prove gross departure from recognized medical standards, it cannot and does not question whether the orders themselves or lack thereof were a medically adequate response to a condition. Accordingly, aside from the earlier found specific instances of unconstitutional failure to carry out physicians' orders with respect to blood pressure readings and lapse in prescribed medication, the Court concludes that plaintiffs' claim that defendants have failed to adopt a systematic course of evaluation and treatment of the chronically ill is not of constitutional dimension.

D. Review of Medically Inappropriate Work Assignments

[12] Plaintiffs also contend that inadequate follow-up medical care allows inmates to be given work assignments which are inappropriate to their physical condition. They offer as an example the work assignment of Theresa Durante. Ms. Durante had a hernia operation at another correctional facility in early February, 1975. When returned to Bedford Hills in April, 1975, she was assigned to a cafeteria job which involved lifting large pots and pans. She informed a nurse that she was unable to do work involving heavy lifting. Her chart reveals, however, that Dr. Williams was consulted and he determined that since more than six weeks had elapsed following the surgery, Ms. Durante could do routine work and regular activities. Thus, this example does not sustain plaintiffs' claim. Two other examples, Ms. Bostick and Ms. Mains, likewise fail to support plaintiffs'

contention, as the records of these inmates do not indicate that they wished to be relieved of their assignments. Moreover, their conditions were being followed by physicians. The evidence presented with respect to a fourth example, Ms. Arrufat, is equivocal. She was under a doctor's order to keep one arm elevated. Ms. Daly testified that Ms. Arrufat worked as a translator. Although a note in Ms. Arrufat's chart indicates that she had stated that her work required use of both hands, she never requested relief from her job assignment and there is insufficient evidence that such a change was medically required.

In sum, plaintiffs failed to establish that class members were kept in medically inappropriate work assignments. Moreover, physicians were consulted and they exercised their individual judgments in reviewing the work assignments. Since such matters of medical judgment do not raise a constitutional question, see *Estelle v. Gamble*, *supra* at 103-108, 97 S.Ct. 285, the Court will not tarry longer on this matter.

E. Outside Consultation

1. Referrals to Specialists

[13] As previously noted, Bedford Hills maintains only ambulatory care facilities, and the medical department provides principally primary physician care. With the exception of gynecology, specialty care is provided through visiting consultants, outside consultants and outside hospital clinics.

Consultations with outside specialists are initiated by a referral from a primary care physician at Bedford Hills. Dr. Williams reviews the physician referrals to outside specialists at the time they are brought to his attention by the medical clerk. However, he does not review referrals to outside specialists in cases of emergency. At one time Dr. Williams also reviewed all referrals for outside diagnostic testing, but he was relieved of this practice by Dr. Frost after it was discovered that he had delayed

acting on these referrals for "weeks at a time," resulting in delays in diagnosis.

a. Individual Cases

In support of their allegation that referrals to specialists are delayed, plaintiffs offered the history of treatment of four cancer or suspected cancer patients.

On November 22, 1974, Ms. Moreland was given a pap test which was reported four weeks later as "suspicious" and with the recommendation that a biopsy be performed. Dr. Saadat reviewed the report approximately one week later and ordered biopsy for after the holidays. A January 28, 1975 notation indicates that Dr. Williams consulted with Grasslands Hospital and determined that an appointment for a biopsy would be made in approximately two weeks. Ms. Moreland was admitted to Grasslands on February 17, 1975 and a hysterectomy was performed when a biopsy revealed that she had cancer which had spread from the cervix to the uterus.

In rebuttal of plaintiffs' contention that Ms. Moreland's case evidences delay on the part of Bedford Hills, defendants' witnesses agreed that the four week delay in the return of the pap report, although customary by Bedford Hills standards, was unreasonable by comparison to private practice.²⁰ However, defendants' witnesses testified that the approximately two month delay from the noting of a "suspicious" condition to the performing of the biopsy was not unusual. In this regard, Dr. Williams testified that he immediately tried to have Ms. Moreland admitted to a specialized cancer hospital. Upon its refusal to admit a prison inmate, he arranged for her admission to Grasslands. Dr. Williams further testified that delays in obtaining hospital admissions is a common problem, even in private practice.

Ann Galloway's pap test, taken on February 21, 1975 and reported two weeks later as "suspicious," revealed "marked dysplasia or carcinoma *in situ*." On March 12, 1975,

20. See section IV(A)(2) *supra* for Dr. Saadat's comparison of the four to five week delays he experienced in the reporting of pap smear re-

sults to Bedford Hills, as compared to the approximately one week delays that prevailed in his private practice.

Dr. Saadat reviewed the report and referred Ms. Galloway for a biopsy. She was seen at the Grasslands clinic on March 31, when another pap test was taken and no return appointment was requested. On April 29, the doctor at Grasslands called Bedford Hills to request the return of Ms. Galloway for another pap test. An appointment made for May 5 was cancelled at Ms. Galloway's request. She was seen at Grasslands on May 12, 1975 and the pap test was repeated. On June 11, she was taken to Grasslands for a colposcopy. Grasslands called on June 19, 1975 to report that Ms. Galloway suffered from "severe dysplasia of the cervix," and the physician there recommended a hysterectomy. On June 22, Ms. Galloway was admitted to Grasslands where a hysterectomy was performed.

The Court finds that in neither of these cases was the delay attributable to the staff at Bedford Hills. In the first instance, delay was caused by the state laboratory reporting the results. After receiving the laboratory reports, in each case, the staff at Bedford Hills responded promptly. In Ms. Moreland's case, any further delay resulted from difficulty in gaining a hospital admission—a problem not caused by, and beyond the control of, Bedford Hills. In Ms. Galloway's case, delays resulted from Grasslands' handling of her treatment. Moreover, in these instances, physicians were consulted and they exercised their medical judgment as to how best to proceed in view of the medical findings. Thus, plaintiffs essentially are asking the Court to review the adequacy of the medical judgment, for example, the Grasslands' physician's decision to repeat the pap test rather than immediately perform a colposcopy in Ms. Galloway's case.²¹ However, as stated earlier, matters of medical judgment generally do not raise a constitutional question. See *Estelle v. Gamble*, *supra* at 103-108, 97 S.Ct. 285. For all of the foregoing reasons, the Court finds no constitutional violation in the delayed referrals of two cases of cervical cancer to outside specialists.

21. It is important to note at this juncture that the Court has made its findings of fact solely with reference to the constitutional standards.

Plaintiffs also contend that unreasonable delays occur in the referral for treatment of cases of suspected breast cancer. For example, Nora Arner was seen on November 26, 1974 by Dr. Williams for a breast mass. He referred her to the gynecologist who saw her on December 6, 1975. On December 19, 1975, she was sent to Grasslands for a mammogram which was reported normal. Nonetheless, an outside consultant who saw Ms. Arner on December 19 recommended a biopsy. On December 31, there is a note by Dr. Williams to try to get Ms. Arner an appointment at a specialized cancer hospital. Through January, there are further notes by him to check on her appointment. On January 27, 1975, when it was apparent that the cancer hospital would not admit Ms. Arner, Dr. Williams referred her to Grasslands. She was seen there on February 3 and was scheduled to return three weeks later for a biopsy. On March 4, 1975, she was admitted to Grasslands and a biopsy was performed.

Defendants testified that there was no significant delay in the treatment of Ms. Arner. She had stated that she had had the breast mass for one year. It is apparent from the summary that Dr. Williams acted promptly and stayed on top of her case until she was referred to Grasslands for treatment.

Similarly, Dr. Saadat testified that the two month delay in biopsying Rebecca Booker's breast mass was not unreasonable because it was hard and movable and not the kind of breast mass requiring immediate attention.

The Court concludes that with respect to the two suspected breast cancer cases, although there may have been some delay in performing biopsies, under all of the circumstances these delays were not significant. In each instance, the Bedford Hills physicians were appropriately responsive to the condition and used their best efforts to obtain the best care available for their patients. Consequently, the Court finds no

Whether the treatment provided these women would constitute malpractice is not before the Court.

constitutional violation in the delayed referrals of these suspected cancer patients to outside specialists.

Plaintiffs further contend that referrals to eye specialists are likewise delayed. They point to the case of Gladys Dieppa who was seen by a physician on July 26, 1975 for headaches and a nodule on her forehead. This physician suggested temporal arteritis as a tentative diagnosis and followed her closely. On September 6, he referred her to Dr. Williams who referred her to the dermatologist. The dermatologist saw her promptly and first ruled out a venereal disease pathology. On September 26, 1975, the dermatologist diagnosed the condition as temporal arteritis and referred Ms. Dieppa to an ophthalmologist who saw her the same day.

Rather than exemplifying delay, Ms. Dieppa's case is unusual for the rapidity with which referrals were carried out. Three physicians followed her case and as soon as the more probable pathologies were ruled out and a firm diagnosis was made, she was seen by an ophthalmologist.

Mary Kerr, a diabetic, was admitted to Bedford Hills on July 16, 1974.²² At that time, she complained that she had headaches, her eyes were "bad", and she needed glasses. On August 9, 1974, she was seen by a Bedford Hills physician for swelling of her left eyelid and poor vision. He referred her to an ophthalmologist; however, she did not receive this consultation until August 27, 1974. The ophthalmologist diagnosed her as suffering from advanced diabetic retinopathy, and recommended photocoagulation treatment.²³ The ophthalmologist saw her again on September 10. On September 25, he called Bedford Hills to indicate that any eye treatment should await completion of the dental work she was re-

ceiving for an infection in her mouth. Apparently he had spoken with the dentist and Dr. Williams and the three together determined that the dental treatment should precede the eye treatment. The dental work was completed by early November, 1974, but apparently her vision had improved. She began to complain of blurred vision again on November 20, but was not taken to the ophthalmologist until December 5, 1974. On December 8, 1974, she was sent to a hospital in New York for photocoagulation therapy, but was returned because the doctors there concluded that her condition had advanced past the point where photocoagulation could be successful. As noted above, Ms. Kerr suffered permanent loss of vision.

In Ms. Kerr's case, there were two delays of over two weeks in referring her to an ophthalmologist for consultation.²⁴ There apparently was no good reason for these delays, as Ms. Kerr evidently was suffering from a condition which, if not checked, would result in permanent disability. However, once she was seen by a physician, a consultation was ordered without specifying the date by which it was to be performed. The Court must assume that this constituted the exercise of medical judgment that the condition was not acute. After she was examined by the ophthalmologist, the primary reason for the further delay in treatment was what appears in hindsight to have been the possibly poor judgment to postpone treatment until completion of some dental work. Regarding the delay after the dental work, the ophthalmologist was at that point familiar with Ms. Kerr's condition and the Court must assume that his failure to schedule her for an earlier date likewise constituted a medical judgment. As stated previously, matters of

coagulation). But once the disease advances, the condition cannot be treated.

22. Many of the following facts of Ms. Kerr's case are also discussed in relation to Admission Health Screening, section 1 *supra*.

23. Diabetic retinopathy is a serious and degenerative disease which is characterized by bleeding into the vitreous, and possibly resulting in the eventual detachment of the retina and consequent blindness. In its early stages, it may be treated with laser beam therapy (photo-

24. In addition, over three weeks elapsed between the time of this diabetic's first eye complaints upon her admission on July 16, 1974, and when she first saw a doctor on August 9, 1974, the sort of delay this Court has already found to be unconstitutional.

al judgment generally do not raise a constitutional question, absent proof of departure from accepted medical standards. See, e.g., *Estelle v. Gamble*, sub. 103-108, 97 S.Ct. 285. Since no such was introduced by plaintiffs, the has concluded that it is precluded finding a constitutional violation in unfortunate, delayed treatment of Ms.

plaintiffs also cite the cases of Ms. Hapeman and Ms. Johnson. In Ms. Hapeman's Dr. Williams was not satisfied with judgment of the local ophthalmologist accordingly, sent her for specialty care New York City hospital. In Ms. Johnson case, when the local optometrist could see her, Dr. Williams immediately sent to a hospital. Thus, these two cases concern concern on the part of Bedford physicians. Nonetheless, delays occurred in these two cases, apparently as a result of administrative and communication problems: the nurse did not bring Ms. Hapeman's condition to a physician's attention for two days; Ms. Johnson went on through and her return and lack of treatment was apparently not brought to Dr. Williams' attention. However, since the physicians did all they could, as quickly as they could, the Court finds that whatever delay there was in these two cases was not reasonable in light of all the circumstances.

In sum, plaintiffs have failed to prove significant and unreasonable delays in referrals to eye specialists. The Court's finding that any delay which occurred in the present case resulted from the medical decision that her condition was not acute is bolstered by contrasting the immediate response to a condition diagnosed as acute in the Hapeman case. Therefore, the Court finds no constitutional violation in the delayed referrals to eye specialists.

As another example of delay in referral outside specialists, plaintiffs cite the case Rosemary Cutshaw. A psychiatrist at

Bedford Hills noted in Ms. Cutshaw's chart on July 30, 1974 that he suspected she might be suffering from carotid artery disease. He suggested that a neurological work up and arteriogram might be indicated. Apparently his note was never picked up by the medical doctors, because this suggested diagnosis was not followed-up until plaintiffs' expert wrote to Dr. Frost. On May 1, 1975, Dr. Frost met with a physician at Bedford Hills and recommended the referral. However, she was not seen in the Grasslands medical clinic until May 16. On May 18, she fainted and was admitted to Grasslands. Upon her discharge from Grasslands in June, she was given a July 11th appointment in the cardiac clinic. Despite the fact that she was in sick wing in July because of chest pains, this appointment was not kept. No record of a visit to the cardiac clinic is contained in her chart through October 6, 1975, and no explanation of the failure to bring her to the cardiac clinic is contained in the record.

In the Court's view, the basis for this claim that there are unreasonable delays in obtaining access to outside consultants is that physicians ordering the referrals fail to specify the date by which the consultation should have occurred.²⁵ To substantiate their claim, plaintiffs must rely on the physicians' judgment that an outside consultation is necessary. At the same time, however, they ignore the fact that the physicians' decision to treat the case as acute or chronic, which affects how quickly the consultation is scheduled, also constitutes the exercise of medical judgment. Although the failure to follow physicians' orders violates the Constitution, the physicians' failure to order a particular course of treatment generally does not, absent proof of gross departure from generally accepted medical standards, justify a finding of a violation of plaintiffs' constitutional rights.

Ms. Cutshaw's case is illustrative. The failure to bring her to the cardiac clinic for her scheduled appointment, or as soon

²⁵ The failure to specify the period within which the consultation should be scheduled is discussed further in Section IV(E)(1)(b) *infra*.

thereafter as possible, is an unconstitutional violation of a physician's order. But the May 1 referral which failed to specify that an immediate or more rapid referral to Grasslands was required does not violate the Constitution since plaintiffs did not prove that the failure to so specify constituted gross medical misjudgment. When the evidence is viewed in this light, it is apparent that plaintiffs have failed to prove through the individual cases they cited that referrals to outside specialists are unconstitutionally delayed.

b. Statistical Evidence

However, plaintiffs also presented statistical evidence that outside consultations are delayed. In January, 1975, forty-seven consultations were ordered, but more than 25% of them had not taken place by March 31, 1975. Of those that took place, the average wait was approximately two weeks. In May, 1975, there were thirty-two referrals to outside specialists. Once again 25% had not taken place three months later. For those that did take place, the average wait was approximately three weeks. In July, 1975, of forty-four outside referrals ordered by Bedford Hills physicians, nearly one-third had not taken place within three months, and of those that had, the patients had waited, on the average, 52 days for their appointments.

The only counter-evidence defendants introduced was the number of outside appointments conducted in the approximately two and three-quarter years preceding this lawsuit. They in no way responded to the delays which plaintiffs proved members of the class experienced.

The Court finds that plaintiffs proved statistically that on the average 25% of outside consultations ordered are not performed within three months. However, the Court does not know the nature of the illnesses which precipitated these referrals. Consequently, it does not know whether there was need for haste, and, in turn, whether the delays were unreasonable in light of the medical circumstances of the cases. In addition, when a Bedford Hills

physician orders a referral to an outside specialist, he does not specify a precise date or a period within which outside consultation should take place. Without passing on the adequacy of this practice, the Court merely notes that as a result of this practice it is more difficult for the Court, and perhaps also for those involved in arranging the ordered consultations, to determine how much haste is required and how much delay is unreasonable. Thirdly, since even in private practice it is difficult for a patient and physician to arrange for a prompt specialist consultation, the Court can only conclude that it is to be expected that Bedford Hills inmates will experience some delay in gaining access to outside specialists. For these three reasons, the Court cannot find that the statistically proven delays were inordinate.

In sum, plaintiffs did not prove, either by use of general statistics or by use of individual cases, that defendants systematically cause inmates to suffer unreasonable delays in obtaining access to outside specialists. Accordingly, the Court finds no constitutional infirmity in the procedure for referrals to outside specialists.

2. Referrals for Elective Surgery

[14] Referrals for what is defined as "elective surgery" must be approved first by Dr. Williams and then by Dr. Frost. Dr. Frost could give no precise definition of elective surgery beyond that it is non-urgent surgery. It could include conditions which are physically distressing, but not permanently disabling or life-threatening. Plaintiffs contend that these review requirements inhibit surgical consultations for painful conditions. As an example, they point to the case of Theresa Durante who was seen by Dr. David on September 8, 1975 for complaints of pain in the vicinity of her previous hernia repair. Dr. David noted a swollen mobile mass, diagnosed it as an enlarged lymph gland, and treated it with penicillin. This treatment and Dr. David's observation of its effectiveness continued until October 17, 1975. When he observed that the tender mass persisted at that time, Dr. David ordered a surgical

consultation as soon as possible. However, after being informed by Dr. Williams that the surgery would be elective, he decided to wait. Ms. Durante continued to complain of pain, but only after receiving a letter from Ms. Durante's attorney regarding her condition did Dr. David again refer her case to Dr. Williams. On November 21, Dr. David called Bedford Hills and instructed the staff to have Ms. Durante sent for a surgical consultation. On December 31, 1975, she was finally seen at another correctional institution by a surgical consultant who diagnosed a small hernia and placed her on the elective surgery list. As of the date of trial, she had not undergone surgery, and testified to continued pain.

Likewise, Donna Foggie was seen for stomach pain on June 14, 1975 by a physician who noted a swelling and recommended a surgical consultation for what appeared to be a hernia. This suggestion was repeated by him on July 26, when he noted continued stomach swelling. She was seen on August 29 by a different doctor who, noting a three centimeter mobile mid-gastric mass, also recommended referral for a surgical consultation. Dr. Williams testified on September 3, 1975 that such a consultation would be for elective surgery only. As of December 1975, no surgical consultation had been scheduled.

The Court finds that an elective surgery referral procedure which requires review by a second or even third physician after the examining physician has determined that surgery is required is not in itself unconstitutional, notwithstanding the delay engendered by such a procedure. In reaching this conclusion the Court is not unmindful that even in private practice, a second opinion nowadays is considered wise, and for insurance purposes perhaps necessary, before a patient agrees to undergo elective surgery. Further, the Court is aware that whether or not a second opinion is sought, delays in obtaining hospital admission for elective surgery are not unknown in private practice. For these reasons, the Court does not now find unconstitutional either the procedure requiring concurrence by a second or

third physician before an elective surgery referral is made, or the attendant delay.

Nonetheless, the Court does condemn the practices which resulted in Dr. Williams' denying Ms. Foggie a consultation despite referrals by two examining physicians, and Ms. Durante obtaining a consultation only because her attorney had intervened. Specifically, the Court criticizes first the broad definition of elective surgery for failing to differentiate between those who are and those who are not suffering physical discomfort which would be alleviated by the surgery. Second, the Court questions whether all of the delay in these two cases was attributable to a combination of the requirement of second and third opinions, and the general difficulty even private practitioners have obtaining such consultations for their patients, or whether some of the delay was inexcusable. Third, the Court questions whether the reviewing physicians (Drs. Williams and Frost) actually exercise informed medical judgment as to the necessity of a timely consultation and whether in so reviewing they give serious consideration to the examining physician's opinion; or, do Drs. Williams and Frost simply override the examining physician's opinion without exercising independent medical judgment or without giving due regard to the examining physician's opinion?

The procedure for referring inmates to outside elective surgery consultations would be unconstitutional if categorizing the surgery as elective were to mean that the consultation would routinely be denied or delayed irrespective of the discomfort to the inmate and irrespective of the examining physician's opinion. Although the Court does not find that plaintiffs have proven this to be the case at Bedford Hills, plaintiffs' proof does move the Court to urge adoption and application of a definition of "elective" that accounts for the inmate's physical distress.

CONCLUSION

In conclusion, the Court would like to state that it was not unfavorably impressed

with the individual members of the Bedford Hills medical staff. They appeared to be truly concerned with the well-being of the inmates they served. Further, the Court agrees with the defendants that the medical care provided at Bedford Hills is nowhere near as shockingly inadequate as that provided in other institutions described in the cases cited in this opinion. Moreover, the Court agrees that there are many fine, dedicated doctors and nurses employed, that outside specialists are available, that there is a system of referral to nearby hospitals, and that adequate medical care is often provided at Bedford Hills.

Nonetheless, the administrative and record keeping procedures at Bedford Hills are grossly inadequate. Moreover, it concerns the Court that to date no one has taken responsibility for auditing the system to evaluate its ability to deliver care to those in need. The Court suspects that the one and only thorough review of the medical delivery system at Bedford Hills occurred only as a result of this lawsuit. For these and other reasons heretofore set forth, care does not regularly reach all those in need.²⁶

The result—the denial of necessary medical care for substantial periods of time—is the same as in the more obviously egregious systems exemplified in the cases cited in this opinion. If the result is the same, the Court perceives no legal significance to the difference in cause, except insofar as it affects the necessary remedy.

The foregoing constitutes the findings of fact and conclusions of law of the Court for the purposes of Rule 52, Fed.R.Civ.P.

REMEDY

Within thirty days of the date of this opinion, plaintiffs' and defendants' counsel shall meet and within ten days thereafter shall report to the Court their progress in reaching agreement on new means and procedures for:

26. Defendants were not required to show that the medical system operated perfectly. Likewise, plaintiffs were not required to prove that it never worked. Plaintiffs proved sufficient

1. Providing better access to medical providers by inmates in sick wing;
2. Conducting sick call which provides adequate nurse screening and reasonably prompt access to a physician;
3. Insuring that ordered laboratory work is reported and followed-up and medical reappointments are scheduled;
4. Periodic self-audits of the performance of the medical care delivery system, and record keeping procedures conducive to such audits.

It is so ordered.



TREASURE CRAFT JEWELERS, INC.

v.

JEFFERSON INSURANCE COMPANY
OF NEW YORK.

Civ. A. No. 76-995.

United States District Court,
E. D. Pennsylvania.

April 27, 1977.

On Motion to Alter or Amend
Judgment May 16, 1977.

A jeweler brought an action against its burglary insurer to recover the value of burglarized jewelry. The District Court, Gorbey, J., held that the loss was not covered by the policy.

Insurer's motion for summary judgment granted.

1. Insurance — 146.7(1, 7)

Insurance contracts are regarded as contracts of adhesion, their multitudinous

instances of non-delivery of necessary medical care to convince the Court that the noted aspects of the system are grossly inadequate and unnecessary suffering inevitably results.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LOUISE TODARO, ERNESTINE DAVIS,
DEIDRA PLAIR, PHYLLIS KLIPPEL,
SYLVIA DAVIS, CLEO BACON, IRIS CAPELLA,
NAOMI BOSTICK, MARY REED, ALICE TAVER,
CAROL LEWIN, TAMMY GOLSTON,
MARGARET GATLING, TONYA JACKSON,
TRACYE CRAIG, BEVERLY MASSEY,
CARMEN GARCIA, HELEN LaVORE,
GLORIA TAGGART, MARTA HARDEE,
ALTHEA McDANIEL, RUTH DOBSON,
MADELINE PINEDA, JUDY WHEAT,
BERNADETTE BROWN, and EVELYN THORPE,
on behalf of themselves and all other
persons similarly situated,

Plaintiffs,

JUDGMENT

-against-

74 Civ. 4581 (RJW)

BENJAMIN WARD, Commissioner of the New
York State Department of Correctional
Services; IAN LOUDON, Assistant Commis-
sioner for Health Services of the New
York State Department of Correctional
Services; DAVID FROST, Southern Regional
Director of Health Services of the New
York State Department of Correctional
Services; FRANCES CLEMENT, Superintendent
of Bedford Hills Correctional Facility;
HENRY WILLIAMS, Health Services Director
of Bedford Hills Correctional Facility;
ROBERT TSCHORN, Surgical Consultant at
Bedford Hills Correctional Facility; and
MARIE DALY, Nurse Administrator at
Bedford Hills Correctional Facility,
individually and in their official
capacities,

Defendants.

Plaintiffs having brought this action on behalf of all
inmates confined at the Bedford Hills Correctional Facility
(hereinafter Bedford Hills) for a declaratory judgment that
the medical care at Bedford Hills violates the constitutional
rights of the plaintiff class and for an injunction against
defendants' unconstitutional medical practices and procedures.

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and defendants having answered denying that the medical care provided is constitutionally inadequate, and the Court, on March 7, 1975, having certified this action as a class action on behalf of "all persons who are or will be confined at Bedford Hills," and this action having been tried to the Court from January 12, 1976, to February 9, 1976, and both sides having filed post-trial memoranda, and the Court having made findings of fact and conclusions of law, in its opinion of April 25, 1977, that certain aspects of the medical care at Bedford Hills are constitutionally inadequate, it is hereby

DECLARED that

I. Defendants' exposure of the plaintiff class to an X-ray machine known to be inadequate and potentially dangerous violates the rights of the plaintiff class under the Eighth and Fourteenth Amendments to the United States Constitution.

II. The lack of communication and medical observation in sick wing, which subjects inmates to grave and unnecessary risks, violates the rights of the plaintiff class under the Eighth and Fourteenth Amendments to the United States Constitution.

III. Defendants' sick call/physician referral procedure through the lobby clinic, which denies or substantially delays access to a physician for diagnosis and treatment of physically distressing illnesses and inevitably results in unnecessary suffering, violates the rights of the plaintiff class under the Eighth and Fourteenth Amendments to the United States Constitution.

IV. Defendants' failure to perform diagnostic tests and schedule medical appointments as ordered by a physician, and their failure to follow-up on abnormal diagnostic test results,

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which result in delay of diagnosis and treatment and cause needless suffering, violate the rights of the plaintiff class under the Eighth and Fourteenth Amendments to the United States Constitution; and it is hereby

ORDERED that defendants, their successors in office and all officials, employees, agents and others acting in concert with them who have notice of this Judgment are enjoined to comply fully and promptly with each and every part of the following order:

I. X-RAY EQUIPMENT

A. No member of the plaintiff class (hereinafter inmate) shall be exposed to any Bedford Hills X-ray machine which does not meet state standards and has not been inspected and certified by the appropriate certifying state agency;

B. All X-ray machines presently in use at Bedford Hills shall be inspected by the appropriate state agency for safety and adequacy within 30 days of the entry of this Judgment if it (they) have not already been inspected and certified within 90 days prior to the date of this Judgment. They shall thereafter be inspected and certified at intervals established by state regulations governing such periodic inspections and certifications;

C. Defendants shall provide counsel for the plaintiffs with copies of all inspection reports concerning X-ray machines at Bedford Hills for three years following entry of this Judgment.

II. SICK WING

A. No inmate shall be placed in an individual locked room unless 1) it is a psychiatric necessity, as determined by someone qualified to make that determination; or 2) an inmate has been admitted to sick wing from segregation. Where an inmate in sick wing is locked in her room, a health staff member (physician or nurse) must determine that such locking will not jeopardize the inmate's health or interfere with the delivery of prescribed care. Where a nurse has made this determination, it must be reviewed by a physician within 12 hours of the locking. In any case when an inmate's door is locked, a health staff member shall personally observe the inmate every half hour and a corrections officer shall check on the inmate every ten minutes;

B. The solid door at the end of the sick wing corridor shall be permanently removed and only grated doors permitting visual observation of the entire corridor may be employed at the end of the corridor;

C. A nurse's station shall be established within or immediately adjacent to sick wing and shall include all necessary emergency equipment, medication and supplies which shall be immediately accessible to all medical staff members, all of whom shall be authorized by defendants to call directly for an ambulance or other immediate transportation to a hospital when such transportation is deemed necessary. 1) The nurse's station shall be staffed from 4 P.M. to 8 A.M. by a medical staff member with training at least equivalent to that of an R.N. to observe and assist inmates;

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2) that staff member shall make rounds and personally observe each inmate in sick wing at least once every two hours from 4 P.M. to 8 A.M.;

D. Defendants shall maintain at all times a functioning mechanical buzzer or bell call system which can be operated by each inmate in sick wing directly from her bed and the terminal of which will be within the nurse's station and within the direct hearing of a medical staff member, or, if the medical staff member has been called away, within the direct hearing of a corrections officer;

E. In addition to the nurses' and corrections officers' regular daytime rounds which the Court found were being conducted at the time of trial, doctor rounds of sick wing shall be conducted daily Monday through Saturday, during which time each inmate in sick wing will be seen personally by a licensed physician and an entry of the encounter will be made by the physician in the inmate's individual medical chart;

F. A record shall be maintained of all rounds of sick wing conducted by either medical or correctional personnel, which shall include, at least, the date and time of each round, the number of inmates observed and the signature of the person making the rounds.

III. SICK CALL/PHYSICIAN REFERRAL PROCEDURES

A. In the absence of a functioning evaluative screening procedure as defined in subparagraph 3 herein, all inmates who request to be seen by a physician must be seen by a licensed physician by the next day, but if the next day is Sunday, then by Monday;

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B. In the absence of automatic access to a physician for all inmates who request a physician appointment as provided for in subparagraph A of this paragraph, inmate requests for a physician examination must be medically evaluated and screened and appointments scheduled according to urgency of need in accordance with the following procedures:

1) Medical evaluation and screening (hereinafter screening) shall be performed at a time and place separate from the administration of medication;

2) Screening shall be conducted by licensed medical personnel, with training at least equivalent to that of a registered nurse, who have received special training in the techniques of medical screening and triage;

3) Specific written protocols, defining the evaluation procedures to be followed at screening and the treatment which the screening staff member may provide, shall be established by the Facility Health Services Director in accordance with this Court's Judgment and Opinion;

4) Screening shall be readily available to all members of the plaintiff class and shall be conducted at the time of an inmate's request for a doctor's examination or at the very next lobby clinic if the request comes during the interval between lobby clinics;

5) With the exception of the proximate presence of a corrections officer when deemed necessary, screening shall be conducted in a facility permitting both confidential communication between the inmate and the screening medical staff member and physical examination in privacy, relevant to the physical complaints present by the inmate;

6) The screening staff member shall have immediately available for use during screening a thermometer, a sphygmomanometer, tongue depressors, a flashlight, a stethoscope, materials for taking cultures, a scale, a sufficient supply of all medications which the protocols set forth in subparagraph (B) (3) above authorize to be used at screening, and any additional equipment and supplies which defendants deem necessary to conduct the screening required by this paragraph;

7) The medical record of the inmate being screened shall be available at the time of screening and an entry concerning the screening encounter shall be made in the inmate's individual medical record at the time of screening by the screening staff member;

8) The staff member doing the screening shall determine by when the inmate will be seen by a physician. On the basis of the screening nurse's observations and recommendations the physician appointment list will be drawn up, if necessary by some other nurse. In no case shall the appointment be more than two weeks after the inmate's request to see a doctor. Unless the appointment is to be scheduled for the same day, the staff member preparing the physician appointment list shall inform the inmate of the date and time of the appointment by providing the inmate with a written appointment slip, signed by the staff member who prepared the appointment list, setting forth the

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inmate's name and the date and time of the doctor's appointment. The signed appointment slip shall be provided within two days of screening;

9) The screening staff member or the staff member preparing the physician appointment list shall prepare a list each day of all inmates who have been screened, and the nature of the problems presented. The date and time of the doctor appointments scheduled shall be added to this list. In addition, all doctor appointments shall be entered into a chronologically arranged doctor appointment book which shall contain at least the following information: the name and location of the inmate, the nature of the problem, the date on which the appointment was made, the name of the staff member making the appointment, the date for which the appointment is scheduled, the date on which the doctor's examination is actually held and the physician who saw the inmate.

IV. DIAGNOSTIC TEST ORDERS AND DOCTOR APPOINTMENT FOLLOW-UP

A. Unless a diagnostic test is to be performed the same day it is ordered, the inmate shall receive, at the time the test is ordered, a written notice of the date, time and place of the appointment for the diagnostic test ordered by a medical staff member, along with written instructions regarding any dieting or other preparations required for the test. The notice shall be signed by a medical staff member. A copy of the written notice shall be given to the medical staff member responsible for performing or insuring performance of the test. That staff member shall each day prepare a list of the names

and locations of all inmates scheduled for diagnostic tests on the following day and shall submit that list to the correction personnel responsible for assuring the inmates' access to the laboratory appointments;

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B. The results of all diagnostic tests shall be reviewed by a medical staff member on the date they are available to or received by the facility. All tests significantly outside the laboratory's normal range shall be immediately shown or communicated to the doctor on duty or on call for a determination if any immediate action is required. In any case, all test results shall be shown to the physician who ordered the test on the first day that physician is at the facility after receipt of the results. All doctors shall initial and date test results when reviewing them;

C. Inmates shall receive written notice of all normal test results within ten days of the facility's receipt of such results;

D. Unless an immediate physician appointment is needed, inmates shall be seen by the doctor ordering the test within ten week days of the facility's receipt of abnormal test results for a personal explanation of any abnormal results and the doctor's determination of appropriate follow-up, if any, on those results;

E. At the time of the order for re-appointment with a physician, inmates shall receive a written notice of the date and time of the re-appointment, signed by a medical staff member, and all such re-appointments shall be entered in the chronological doctor's appointment book required by paragraph III(B)(9) above;

F. Defendants shall maintain a laboratory order book which will contain, at a minimum, the following

information: the name and location of the inmate, the test ordered, the name of the staff member ordering the test, the date the test is ordered, the date by which the test is to be done, the date the test is performed, the results, and the date the results are received or available.

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V. AUDITS AND RECORD-KEEPING PROCEDURES

A. Defendants shall maintain such records as are necessary to effective and meaningful auditing of the performance of the medical care delivery system at Bedford Hills. At a minimum these shall include

- 1) the sick wing rounds record mandated by paragraph II(F);
- 2) the medical screening list and doctor's appointment book mandated by paragraph III(B)(9);
- 3) the laboratory order book mandated by paragraph IV(F);
- 4) defendants shall continue to maintain an admission processing record which includes, at a minimum, the name of each newly admitted inmate, the date of admission, the place of immediate prior confinement, if any, the date the inmate's medical records were requested from such prior institution, the date that each of the routine admission diagnostic tests are performed and the person performing them, and the date of the general physician and gynecological admission examinations and the doctors performing them; and
- 5) a medication record;

B. Every three months for the first year after entry of this Judgment, every six months for the second year after entry of this Judgment, and once during the third year after entry of this Judgment, qualified personnel shall conduct, at defendants' expense, an audit of the medical care delivery system at Bedford Hills, including, but not limited to, review of all records mandated by this Judgment, review of

20 randomly selected inmate medical charts, inspection of all medical facilities and equipment, and such personal observation of medical procedures and interviews with medical staff and inmates as the auditors shall deem appropriate. A written report concerning the completeness of medical records and the adequacy of such records and procedures to implement the requirements of this Judgment and containing recommendations for changes to achieve those requirements more efficiently and speedily shall be made to counsel for both sides, within 45 days of each audit.

And it is further

ORDERED that defendants shall, within two weeks of the entry of this Judgment, provide each member of the plaintiff class with a copy of this Judgment or, where appropriate, a Spanish translation of this Judgment. In addition, defendants shall provide such a copy or translation to each newly admitted member of the class on the date of admission to Bedford Hills. Plaintiffs' counsel shall identify which inmates require the Spanish translation and shall provide defendants with sufficient copies of this Judgment and the Spanish translation for this purpose; and it is further

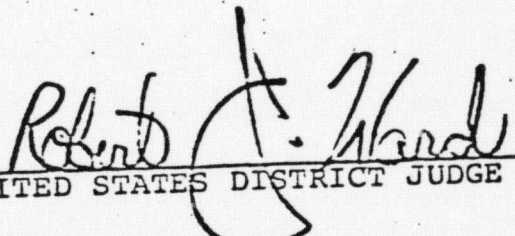
ORDERED that defendants within two weeks of the entry of this Judgment, provide to every employee of the Department of Correctional Services assigned to Bedford Hills and having some involvement with the delivery of health care a copy of this Judgment along with a notice, signed by defendant Commissioner of Correctional Services, informing them that failure to comply with any of the terms of this Judgment may be deemed contempt of this Court punishable by fine or imprisonment. Defendants shall

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provide such a copy and notice to any employee who is in the future assigned to Bedford Hills and involved in delivery of medical care to the plaintiff class at the time of such assignment or involvement; and it is further

ORDERED that, until terminated by order, this Court shall retain jurisdiction over this action for any further orders or action which may be appropriate or necessary for the implementation or enforcement of this Judgment or any of the provisions thereof.

Dated: New York, New York
July 11, 1977


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LOUISE TODARO, ERNESTINE DAVIS,
DEIDRA PLAIR, PHYLLIS KLIPPEL,
SYLVIA DAVIS, CLEO BACON, IRIS CAPELLA,
NAOMI BOSTICK, MARY REED, ALICE TAVER,
CAROL LEWIN, TAMMY GOLSTON,
MARGARET GATLING, TONYA JACKSON,
TRACYE CRAIG, BEVERLY MASSEY,
CARMEN GARCIA, HELEN LAVORE,
GLORIA TAGGART, MARTA HARDEE,
ALTHEA McDANIEL, RUTH DOBSON,
MADELINE PINEDA, JUDY WHEAT,
BERNADETTE BROWN, and EVELYN THORPE,
on behalf of themselves and all other
persons similarly situated,

Plaintiffs,

-against-

BENJAMIN WARD, Commissioner of the New
York State Department of Correctional
Services; IAN LOUDON, Assistant Commis-
sioner for Health Services of the New
York State Department of Correctional
Services; DAVID FROST, Southern Regional
Director of Health Services of the New
York State Department of Correctional
Services; FRANCES CLEMENT, Superintendent
of Bedford Hills Correctional Facility;
HENRY WILLIAMS, Health Services Director
of Bedford Hills Correctional Facility;
ROBERT TSCHORN, Surgical Consultant at
Bedford Hills Correctional Facility; and
MARIE DALY, Nurse Administrator at
Bedford Hills Correctional Facility,
individually and in their official
capacities,

Defendants.

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[Plaintiffs' Proposed]

JUDGMENT

74 Civ. 4581 (RJW)

-----X
Plaintiffs having brought this action on behalf of all
inmates confined at the Bedford Hills Correctional Facility
(hereinafter Bedford Hills) for a declaratory judgment that
the medical care at Bedford Hills violates the constitutional
rights of the plaintiff class and for an injunction against
defendants' unconstitutional medical practices and procedures,

and defendants having answered denying that the medical care provided is constitutionally inadequate, and the Court, on March 7, 1975, having certified this action as a class action on behalf of "all persons who are or will be confined at Bedford Hills," and this action having been tried to the Court from January 12, 1976, to February 9, 1976, and both sides having filed post-trial memoranda, and the Court having made findings of fact and conclusions of law, in its opinion of April 25, 1977, that certain aspects of the medical care at Bedford Hills are constitutionally inadequate, it is hereby

DECLARED that

I. Defendants' exposure of the plaintiff class to an X-ray machine known to be inadequate and potentially dangerous violates the rights of the plaintiff class under the Eighth and Fourteenth Amendments to the United States Constitution.

II. The lack of communication and medical observation in sick wing, which subjects inmates to grave and unnecessary risks, violates the rights of the plaintiff class under the Eighth and Fourteenth Amendments to the United States Constitution.

III. Defendants' sick call/physician referral procedure through the lobby clinic, which denies or substantially delays access to a physician for diagnosis and treatment of physically distressing illnesses and inevitably results in unnecessary suffering, violates the rights of the plaintiff class under the Eighth and Fourteenth Amendments to the United States Constitution.

IV. Defendants' failure to perform diagnostic tests and schedule medical appointments as ordered by a physician, and their failure to follow-up on abnormal diagnostic test results,

which result in delay of diagnosis and treatment and cause needless suffering, violate the rights of the plaintiff class under the Eighth and Fourteenth Amendments to the United States Constitution. A52

V. Defendants' failure to keep adequate medical records to assure prompt access to a physician and delivery of prescribed care and their failure to provide the regular auditing necessary to insure such access to and delivery of care, violate the rights of the plaintiff class under the Eighth and Fourteenth Amendments to the United States Constitution; and it is hereby

ORDERED that defendants, their successors in office and all officials, employees, agents and others acting in concert with them are enjoined to comply fully and promptly with each and every part of the following order:

I. X-RAY EQUIPMENT

A. No member of the plaintiff class (hereinafter inmate) shall be exposed to any X-ray machine which is not safe and adequate for the intended use and which has not been inspected and certified to be safe and adequate by the appropriate certifying state agency within the prior 12 months;

B. All X-ray machines presently in use shall be inspected by the appropriate state agency for safety and adequacy within 30 days of the entry of this Judgment and at least once every year thereafter;

C. Defendants shall provide the Court and counsel for the plaintiffs with copies of all inspection reports concerning X-ray machines at Bedford Hills for three years following entry of this Judgment.

II. SICK WING

A. No door to any individual room in sick wing shall be locked at any time, unless 1) a licensed psychiatrist issues a specific written order for the locking of an individual inmate for a period not to exceed 24 hours, or 2) an inmate in sick wing has been adjudicated guilty of a disciplinary infraction and sentenced to segregation and a physician has determined that continued locking will not jeopardize the inmate's health or interfere with the delivery of prescribed care; however, in any case when an inmate's door is locked, an individual must be stationed at all times immediately outside the locked door to observe and assist the locked inmate and to notify the medical staff when necessary;

B. The solid door at the end of the sick wing corridor shall be permanently removed and only grated doors permitting visual observation of the entire corridor may be employed at the end of the corridor;

C. 1) A medical staff member, with training at least equivalent to that of a registered nurse, shall be stationed within or immediately adjacent to sick wing from 4 p.m. to 8 a.m. to observe and assist inmates; 2) That staff member shall make rounds and personally observe each inmate in sick wing at least once every half-hour during that period; and 3) Defendants shall maintain at all times a functioning mechanical buzzer or bell call system which can be operated by each inmate in sick wing directly from her bed and the terminal of which will be within the direct hearing of a medical staff member;

D. Defendants shall maintain within or near sick wing, and make immediately accessible to all medical staff members, all necessary emergency equipment, medication and supplies, and shall authorize any medical staff member to call directly for an ambulance or other immediate transportation to a hospital when deemed necessary;

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E. Doctor rounds of sick wing shall be conducted daily, during which time each inmate in sick wing will be seen personally by a licensed physician and an entry of the encounter will be made by the physician in the inmate's individual medical chart;

F. A record shall be maintained of all rounds of sick wing conducted by either medical or correctional personnel, which shall include, at least, the date and time of each round, the number of inmates observed and the signature of the person making the rounds.

III. SICK CALL/PHYSICIAN REFERRAL PROCEDURES

A. All inmates who request to see a doctor must be seen by a licensed physician no later than the next working day after the request, unless such requests are evaluated and screened pursuant to subparagraph B of this paragraph;

B. If inmate requests for a physician examination are to be medically evaluated and screened and appointments scheduled according to urgency of need, the following procedures must be employed:

- 1) Medical evaluation and screening (hereinafter screening) shall be performed at a time and place separate from the dispensation of medication;

2) Screening shall be conducted by licensed medical personnel, with training at least equivalent to that of a registered nurse, who have received special training in the techniques of medical screening and triage;

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3) Specific written protocols, defining the evaluation procedures to be followed at screening and the treatment which the screening staff member may provide, shall be established by the Facility Health Services Director;

4) Screening shall be readily available to all members of the plaintiff class and shall be conducted at the time of an inmate's request for a doctor's examination;

5) Screening shall be conducted in a medical facility permitting both confidential communication between the inmate and the screening medical staff member and physical examinations, in privacy, relevant to the physical complaints presented by the inmate;

6) The screening staff member shall have immediately available for use during screening a thermometer, a sphygmomanometer, tongue depressors, a flashlight, a stethoscope, materials for taking cultures, a scale, a sufficient supply of all medications which the protocols set forth in subparagraph (B)(3) above authorize to be used at screening, and any additional equipment and supplies which defendants deem necessary to conduct the screening required by this paragraph;

7) The entire individual medical record of the inmate being screened shall be available at the time of screening and an entry concerning the screening encounter shall be made in the inmate's individual medical record at the time of screening by the screening staff member;

8) The staff member doing the screening shall determine when the inmate will be seen by a physician. In no case shall the appointment be more than three working days after the inmate's request to see a doctor. If the inmate is not to be seen by a doctor immediately after the screening, the staff member conducting the screening shall inform the inmate of the date and time of the appointment and the reason why the appointment is delayed, and shall provide the inmate with a written appointment slip, signed by the screening staff member, setting forth the inmate's name and the date and time of the doctor's appointment;

9) The screening staff member shall prepare a list each day of all inmates who have been screened, the nature of the problems presented, and the date and time of the doctor appointments scheduled. In addition, all doctor appointments shall be entered into a chronologically arranged doctor appointment book which shall contain at least the following information: the name and location of the inmate, the nature of the problem, the date on which the appointment was made, the name of the staff member making the appointment,

the date for which the appointment is scheduled,
the date on which the doctor's examination is
actually held and the physician who saw the inmate.

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IV. DIAGNOSTIC TEST ORDERS AND DOCTOR APPOINTMENT
FOLLOW-UP

A. Unless a diagnostic test is to be performed immediately after it is ordered, the inmate shall receive, at the time the test is ordered, a written notice of the date, time and place of the appointment for the diagnostic test ordered by a medical staff member, along with written instructions regarding any dieting or other preparations required for the test. The notice shall be signed by a medical staff member. A copy of the written notice shall be given to the medical staff member responsible for performing or insuring performance of the test. That staff member shall each day prepare a list of the names and locations of all inmates scheduled for diagnostic tests on the following day and shall submit that list to the correction personnel responsible for assuring the inmates' access to the medical appointments;

B. The results of all diagnostic tests shall be reviewed by a medical staff member on the date they are available to or received by the facility. All tests outside the laboratory's normal range shall be immediately shown or communicated to the doctor on duty or on call for a determination if any immediate action is required. In any case, all test results shall be shown to the physician who ordered the test on the first day that physician is at the facility after receipt of the re-

sults. All doctors shall initial test results when reviewing them;

C. Inmates shall receive written notice of all normal test results within three days of the facility's receipt of such results;

D. Inmates shall be seen by a doctor within three working days of the facility's receipt of abnormal test results for a personal explanation of any abnormal results and the doctor's determination of appropriate follow-up, if any, on those results;

E. Inmates shall receive a written notice of the date and time of a re-appointment with a physician, signed by a medical staff member, at the time of the order for the re-appointment, and all such re-appointments shall be entered in the chronological doctor's appointment book required by paragraph III (B)(9) above;

F. In scheduling elective surgery appointments, defendants shall take into account the physical distress of the inmate;

G. Defendants shall maintain a laboratory order book which will contain, at a minimum, the following information: the name and location of the inmate, the test ordered, the name of the staff member ordering the test, the date the test is ordered, the date by which the test is to be done, the fact that notice was given to the inmate, the date the test is performed, the name of the person performing the test, the results, the date the results are received or available, the date of, and name of the staff member conducting, the review of the results, the name of the doctor who reviews any abnormal results, the date of such review, the doctor's order, if any, in light of the test result, and the date and form of notice to the inmate of the result;

H. Defendants shall maintain a comparable record, with all of the information listed in subparagraph (G) above, of orders for X-rays and of orders for any other kind of diagnostic test for which defendants deem it advisable to keep separate records. Defendants shall, in any case, maintain a separate, comparable record for all diagnostic tests and doctor's examinations ordered which must be conducted at a medical facility outside Bedford Hills, which record must, in addition to the information listed in subparagraph (G) above, contain the date of any contact with an outside facility, the Bedford Hills staff member making the contact, the person contacted at the outside facility, the date when an appointment is cancelled, the reason for the cancellation and the date of the substitute appointment.

V. AUDITS AND RECORD-KEEPING PROCEDURES

A. Defendants shall maintain such records as are necessary to effective and meaningful auditing of the performance of the medical care delivery system at Bedford Hills. At a minimum these shall include 1) the sick wing rounds record mandated by paragraph II(F); 2) the medical screening list and doctor's appointment book mandated by paragraph III(B)(9); 3) the laboratory order book, X-ray order book and outside appointment order book mandated by paragraphs IV(G) and (H); 4) an admission processing record which will include, at a minimum, the name of each newly admitted inmate, the date of admission, the place of immediate prior confinement, if any, the date the inmate's medical records were requested from such prior institution, the date that each of the routine admission diagnostic tests

are performed and the person performing them, and the date of the general physician and gynecological admission examinations and the doctors performing them; and 5) a medication record in each inmate's individual medical chart showing the date and nature of each prescription, the prescribing doctor, the date and time of each dispensation or refusal, the person dispensing, and the date that notice was given to the physician of the impending termination of the prescription;

B. Every two months for the first year after entry of this Judgment and every three months for the next two years thereafter, qualified consultants, not employed by the Department of Correctional Services but selected by the defendants with the approval of the Court, shall conduct, at defendants' expense, an audit of the medical care delivery system at Bedford Hills, including, but not limited to, review of all records mandated by this Judgment, review of 25 randomly selected inmate medical charts, inspection of all medical facilities and equipment, and such personal observation of medical procedures and interviews with medical staff and inmates as the auditors shall deem appropriate. A written report concerning the completeness of medical records and the adequacy of such records and procedures to implement the requirements of this Judgment and containing recommendations for changes to achieve those requirements more efficiently and speedily shall be made to the Court, with a copy to counsel for both sides, within 30 days of each audit;

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C. The Facility Health Services Director and the Regional Health Services Director, along with any other medical staff members they may designate, shall conduct every month their own audit of medical care procedures and records at Bedford Hills, which shall include, at least, a review of 10 randomly selected individual charts and all general medical records mandated by this Judgment, and a meeting with the entire medical staff. In addition, the Facility Health Services Director, Regional Health Services Director, nurse supervisor, laboratory technician and pharmacist shall meet at least monthly with a representative group of the plaintiff class, selected in open elections by the plaintiff class, to discuss implementation of this Judgment.

And it is further

ORDERED that defendants shall, within 5 days of the entry of this Judgment, provide each member of the plaintiff class with a copy of this Judgment or, where appropriate, a Spanish translation of this Judgment approved by the Court. In addition, defendants shall provide such a copy or translation to each newly admitted member of the class on the date of admission to Bedford Hills. Plaintiffs shall provide defendants with sufficient copies of this Judgment and the Spanish translation for this purpose; and it is further

ORDERED that defendants shall, within 5 days of the entry of this Judgment, provide to every employee of the Department of Correctional Services assigned to Bedford Hills and every other Department employee who is assigned elsewhere but is or may be involved in the delivery of medical care to the plaintiff class, a copy of this Judgment along with a notice, signed by defendant Commissioner of Correctional

Services, informing them that failure to comply with any of the terms of this Judgment may be deemed contempt of this Court punishable by fine, or imprisonment. Defendants shall provide such a copy and notice to any employee who is in the future assigned to Bedford Hills or involved in delivery of medical care to the plaintiff class at the time of such assignment or involvement; and it is further

ORDERED that, until further order, this Court shall retain jurisdiction over this action for any further orders or action which may be appropriate or necessary for the implementation or enforcement of this Judgment or any of the provisions thereof.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LOUISE TODARO, ERNESTINE DAVIS, :
DEIDRA BLAIR, PHYLLIS KLIPPEL, :
SYLVIA DAVIS, CLEO BACON, IRIS CAPELLA, :
NAOMI BOSTICK, MARY REED, ALICE TAVER, :
CAROL LEWIN, EMILY GOLSTON, MARGARET :
CATLING, TONYA JACKSON, TRACYE CRAIG, :
BEVERLY HASSEY, CARMEN GARCIA, HELEN :
LAFORE, GLORIA TAGGART, MARTA HARDEE, :
ALTHEA McDANIEL, RUTH DOBSON, :
MADELINE PINEDA, JUDY WHEAT, :
BERNADETTE BROWN, and EVELYN THORPE, :
on behalf of themselves and all other :
persons similarly situated, :

Plaintiffs, :

- against -

BENJAMIN WARD, Commissioner of the New :
York State Department of Correctional :
Services; IAN LOUDON, Assistant Commis- :
sioner for Health Services of the New :
York State Department of Correctional :
Services; DAVID FROST, Southern Regional :
Director of Health Services of the New :
York State Department of Correctional :
Services; FRANCES CLEMENT, Superinten- :
dent of Bedford Hills Correctional :
Facility; HENRY WILLIAMS, Health :
Services Director of Bedford Hills :
Correctional Facility; ROBERT TSCHORN, :
Surgical Consultant at Bedford Hills :
Correctional Facility; and MARIE DALY, :
Nurse Administrator at Bedford Hills :
Correctional Facility, individually :
and in their official capacities, :

Defendants. :
-----X

[Defendants' Proposed]

JUDGMENT

74 Civ. 4581 (RJW)

Plaintiffs having brought this action on behalf of all inmates confined at the Bedford Hills Correctional Facility (hereinafter Bedford Hills) for a declaratory judgment that the medical care at Bedford Hills violates the constitutional rights of the plaintiff class and for an injunction against defendants' unconstitutional medical practices and procedures, and defendants having answered denying that the medical care provided is constitutionally inadequate, and the Court, on March 7, 1975, having certified this action as a class action on behalf of "all persons who are or will be confined at Bedford Hills," and this action having been tried to the

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Court from January 12, 1976, to February 9, 1976, and both sides having filed post-trial memoranda, and the Court having made findings of fact and conclusions of law, in its opinion of April 25, 1977, that certain aspects of the medical care at Bedford Hills are constitutionally inadequate, it is hereby

DECLARED that

I. Defendants' exposure of the plaintiff class to an X-ray machine known to be inadequate and potentially dangerous violates the rights of the plaintiff class under the Eighth and Fourteenth Amendments to the United States Constitution.

II. The lack of communication and medical observation in sick wing, which subjects inmates to grave and unnecessary risks, violates the rights of the plaintiff class under the Eighth and Fourteenth Amendments to the United States Constitution.

III. Defendants' sick call/physician referral procedure through the lobby clinic which denies or substantially delays access to a physician for diagnosis and treatment of medically distressing illnesses and inevitably results in unnecessary suffering, violates the rights of the plaintiff class under the Eighth and Fourteenth Amendments to the United States Constitution.

IV. Defendants' failure to perform diagnostic tests, to schedule follow-up medical appointments with a primary care physician, to follow-up on abnormal diagnostic test results result in delay of diagnosis and treatment and cause needless suffering, violate the rights of the plaintiff class under the Eighth and Fourteenth Amendments to the United States Constitution, and it is hereby

ORDERED that defense, their employees, agents and others acting in concert with them who have notice of this Judgment are enjoined to comply with each and every part of the following order:

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A. X-Ray Equipment - no x-ray machine will be used by the health staff at Bedford Hills which has not passed inspection by the New York State Health Department.

B. Sick Wing

1. No door to any individual room in sick wing shall be locked at anytime unless an inmate in sick wing (a) has been adjudicated guilty of a disciplinary infraction and sentenced to segregation (b) is uncooperative (c) is contagious or (d) requires protective custody. Where an inmate in sick wing is locked in her room, a health staff member (physician or nurse) must determine that such locking will not jeopardize the inmate's health or interfere with the delivery of prescribed care. Where a nurse has made this determination, it must be reviewed by a physician within twenty four hours of the locking.

2. The solid door at the end of the sick wing corridor will be permanently removed and only grated doors permitting visual observation of the entire corridor may be used at the end of the corridor.

3. A mechanical call system shall be installed in each sick wing room. The terminal shall be where it can be observed at all times by a health or corrections staff member.

4. There shall be daily rounds of sick wing by a health staff member.

C. Sick Call/Physician Referral Procedures

1. Evaluation of medical complaints pursuant to written guidelines established by the Facility Health Services Director (Screening) shall be performed by a nurse at a time separate from the administration of medication.

2. Requests for screening will be made at times and places designated by the health staff except for emergency requests. Screening will be conducted at the time of the request for medical attention or as soon thereafter as is reasonably practical.

3. Screening shall be conducted in private insofar as the security of the health staff permits.

4. The screener shall have available a sphygmomanometer, other minimal diagnostic tools, and the active health record of the inmate requesting medical attention.

5. The screener shall determine if referral to a physician is necessary.

6. Physician appointments after screening will be arranged by a health staff member. Unless the appointment is scheduled for that day, the inmate will receive a written appointment slip with the date and time of her appointment.

D. Laboratory Tests

1. Unless a specimen for a laboratory test is to be taken the day it is ordered, the inmate shall receive at the time the test is ordered, a written notice of the date, time, and place to report for the taking of the specimen.

2. The results of all laboratory tests shall be reviewed by a health staff member on the date they are received to determine if an immediate response is necessary; if no immediate response is necessary, test results will be returned to the physician who ordered the test.

3. If in the judgment of the health staff the test result requires no follow-up, the inmate will be informed in writing that the laboratory test result has been received and that no further medical attention is necessary.

E. Physician Appointments

Inmates shall receive a written notice of the date and time of an initial or follow-up appointment with a primary care physician.

F. Audits

1. A member of the central office health staff or the Department of Correctional Services will review at least yearly a random sampling of ten inmate health records to assess if initial and follow-up appointments with primary care physicians are scheduled as ordered, ordered laboratory work is completed and abnormal laboratory reports are followed up.

2. The results of such audits and the charts audited shall be available to counsel for plaintiff class or their designee if the inmates whose charts are audited sign a written form releasing such charts to counsel or their designee for a period of two years following entry of this Judgment.

AND it is further

ORDERED that defendants will be under no obligation to institute the screening procedures set forth in Part C of this Judgment, to supply written appointment slips or laboratory result slips as set forth in Parts D(1) and (3) and Part E of this Judgment or to install a mechanical call system in each sick wing room as set forth in Part B(3) of this Judgment until there are at least two and one-half full time primary care physicians employed at Bedford Hills or budgetary means of supplying the equivalent services, thirteen full time nurses, one full time pharmacist and four full time clerical workers assigned to the

health staff at Bedford Hills for an inmate population of no more than 400, until funds are made available for a mechanical call system and for alteration of the out-patient wing to facilitate the delivery of service as set forth in this Judgment; and it is further

ORDERED that defendants shall provide each inmate at Bedford Hills with a copy of this Judgment within two weeks after plaintiffs have given them sufficient copies of this judgment.

Dated: New York, New York
 , 1977

U.S.D.J.

NOTES
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DIST. COURT
D. OF N.Y.
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I. ACCESS TO PHYSICIAN DENIED OR SUBSTANTIALLY DE.

1. HAPEMAN

- a. Bacterial infection of rig..
doctor on January 30, 1975, al.
with a cream.

Nurse noted the eye was blind on February 1, 1975. The next physician visit was February 3, 1975. She was referred to an ophthalmologist who saw her on February 4, and sent her to the hospital immediately. On February 5th, she had surgery to drain the infection out of the eye. She was left with glaucoma in the eye as a result of the infection.

- b. Right eye pain March 18, 1975; saw ophthalmologist March 31, 1975.
- c. Right eye pain and blurring of vision June 5, 1975. Saw ophthalmologist November 4, 1975.
- d. Loss of vision in right eye December 12, 1975. Seen by Bedford Hills physician December 16, 1975 and referred to ophthalmologist. No recorded visit to ophthalmologist as of December 23, 1975.

2. LEDGISTER

Reported to nurse with sharp pains in stomach and pain on urination January 28, 1975. The next notation in the record is a visit to the gynecologist on April 2, 1975 for pain in the lower abdomen. The diagnosis was myomatous uterus, I.U.D. in place, Bartholins cyst.

On May 12, 1975 she was admitted to Sick Wing with abdominal pain and fainting and on May 14th saw the gynecologist who diagnosed, in addition to the above, endometritis and Trichomonas vaginitis and gave her two antibiotics.

Next gynecology visit July 3, 1975, referral planned for continued pain; this referral was apparently not done. On the next gynecology visit, December 4, 1975, the I.U.D. could not be found, and an X-ray was planned to locate it.

3. BACON

Spontaneous miscarriage, November 12, 1973. Began heavy vaginal bleeding November 21, 1973. No gynecology consultation and no vaginal exam for this. (Had vaginal exam December 10, 1973 for a new problem of abdominal pain. First saw gynecologist January 18, 1974).

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4. BROWN

On admission July 25, 1974 gave history of shortness of breath on exertion. Seen by nurse on September 24th for asthma, September 25th for "sinus," October 4th and October 5th for shortness of breath, and October 6th for asthma. On all these visits she was given a cold or allergy preparation from the standing orders. Was treated for urinary infection October 4, 1974. First M.D. exam was December 2, 1974 for back pain; she mentioned asthma at this visit but had no relevant exam or treatment for asthma.

5. DOBSON

- a. April 22, 1974, patient seen for vomiting and examined. Given no medicines, told to keep diary (of foods eaten). April 30th spoke with M.D. about vomiting after I.N.H. (meds.). Given no meds: told to keep diary. ~~May 11, 1975~~ ^{MAY 1, 1974 NOW} nurse refused M.D. appointment as she did not keep diary.
- b. Skin rash November 2, 1974, staff M.D. visits November 2, 18, 25; January 5, 7, 8; Blood test for syphilis ordered November 2nd and not returned (patient had been Rx for syphilis September 1974). On January 5 record shows patient expressed concern about syphilis. Syphilis test drawn January 1975. On January 8th referred to dermatologist February 7th, Dx acne.
- c. April 20, 1975 and April 22, 1975 nurse noted symptoms of left breast pain and patient said she had prior surgery on that breast. No. M.D. visit as of October 1, 1975 for this problem (had complete P.E. June 5, 1975).

6. GALLOWAY

- 21 HJW
- a. February 2, 1975 pap test taken showing "marked dysplasia or carcinoma in situ." March 12, 1975 referred to gynecologist at Grasslands for biopsy of cervix. No record of report being sent with her: March 31st, May 12th, seen at Grasslands; June 11th, Colposcopy & biopsy at Grasslands; June 19th to 23rd admitted to hysterectomy; ovaries also removed. September 30th, Bedford Hills physician saw patient for hot flashes and referred to gynecologist "tomorrow." October 11th patient had appointment with Bedford Hills gynecologist.

7. MORELAND

Pap test done November 22, 1974, returned abnormal December 18, 1974, "suspicious, recommended Bx" noted by Bedford Hills physician December 24, 1974. Scheduled for biopsy December 24, 1974, rescheduled January 24, 1975. Had hysterectomy & BSO for carcinoma in situ of cervix, after admission to hospital February 17, 1975. HJW.

8. DURANTE

Seen by Bedfore Hills physician for a lump in the area of her hernia scar with increasing pain, September 8, 1975, September 19th, October 6th, October 17th, November 6th. On October 6th Bedford Hills physisicn notes "Could be suture granuloma. Will consider surgery consultation." On October 17th, "surgical consultation as soon as possible." On November 6th patient's physician requests reconsideration of surgery - consult because of increasing pain. On November 20th patient's physician requests reconsideration of surgery consult because of her taking an overdose of pills November 19th. On November 21st, Dr. Frost telephoned requesting surgery consultation be arranged. On November 24th, scheduled for appointment "to Fishkill" (for surgery consultation). Apparently not sent as of December 23, 1975.

9. BLACKSTOCK

Admitted July 16, 1974. Seen by gynecologist August 14, 1974, diagnosis mixed vaginitis and pelvic inflammatory disease, given appointment to return in 3 weeks, next appointment December 5, 1974.

10. GARCIA

- a. Seen by general physician at Bedford Hills on November 7, 1973, December 4, 1973, and December 20, 1973 for vaginal infection. On January 21, 1974, general physician put her on the list for the gynecologist. On March 18, 1974, seen by the gynecologist and diagnosed as monilia vaginal infection. Told to return in 2 weeks.

Next seen by gynecologist May 8, 1974. Diagnosed as Trichomonas vaginal infection. Told to return in 3 weeks (done). On July 25, 1974 patient wrote a letter stating she needed attention for a severe vaginal infection. Seen on August 2, 1974 and had monilia infection. Told to return in 3 weeks. Next gynecology visit January 16, 1975.

- b. Referred to orthopedic specialist for carpal tunnel syndrome of hand on November 26, 1974.

On December 10, 1974 was seen by the orthopedist who injected the hand, recommended repeat examination in 4 weeks to consider surgery.

There is no record in chart of her being sent back; rather, on March 5, 1975 Bedford Hills physician requested that the consultation be "obtained...with respect to recommendations."

11. JOHNSON

- a. On September 25, 1974, seen for decreased vision in right eye of 2 days duration. Referred to ophthalmologist "stat".

On October 4, 1974 physician notes, "Local ophthalmologist cannot accomodate patient. Situation urgent. To hospital stat."

Patient was seen at hospital October 4th and subsequently at the ophthalmology clinic. Permanent damage to right eye with 20/200 vision was noted November 6, 1974.

- b. On January 27, 1975 nurse noted "Eyes hurting for 2 weeks. Would like to see a doctor." On February 4, 1975, nurse noted, "Complains of vision in other eye." Not referred to Bedford Hills physician; rather eye appointment at hospital moved up from February 13th to February 10th.

12. DIEPPA

- a. On September 26, 1975, seen for temporal arteritis with partial loss of vision. Ophthalmology and neurology consultation recommended. On September 29, 1975, medical director took blood tests, approved the consultations. No record of consultations done or treatment prescribed through October 3, 1975.

- b. From April 12, 1975, through September 6, 1975, had several visits to Bedford Hills physician for a nodule on the forehead. On September 6th, referred to a consultant (dermatologist). Consultant note (not dated) recommended biopsy in 2 weeks to rule out gumma (syphilis) or metastasis (cancer). No biopsy done as of October 3, 1975.

13. KERR

Patient is a diabetic who was seen by the physician at Bedford Hills on August 9, 1974, for poor vision. On August 27, 1974 she was seen by the opht' mologist who planned hospital admission but on September 25, 1974 called to postpone it because she was having dental work. On November 11th Bedford Hills requested another ophthalmology on appointment. She was seen on December 5th and admitted to a hospital on December 8th. The evaluation at the hospital showed that diabetic retinopathy had progressed too far for photocoagulation (laser beam therapy) to be of use. On January 25, 1975 her vision had decreased to 20/300 in the right eye and 20/400 in the left eye.

14. VAN PELT

Injured right knee April 27, 1975. Seen by physician for continuing pain April 28, May 3rd, May 8th, and May 24th. Referred for orthopedic consultation June 11th for continuing pain and disability. No consultation in record as of October 6, 1975.

15. BOOKER

- a. Treated by Bedford Hills physician for tumor in pelvis with high fevers (probable abscess) without gynecology consultation December 11, 1972 to January 12, 1973. Told to return in one month for pelvic examination.

Next pelvic examination April 23, 1973. Admitted to Sick Wing for abdominal pain May 24, 1973. First seen by physician June 8, 1973.

Admitted to Sick Wing for fever and abdominal pain July 2, 1973.

On July 3rd, requested appointment to hospital gynecology clinic.

On July 6th, seen at hospital and scheduled for admission for pelvic tumor.

On July 7, 1973, admitted and had uterus, ovaries and tubes removed because of infection.

- b. Seen for lump in right breast April 2, 1975 and referred for biopsy, June 4, 1975 to June 7, 1975 admitted for biopsy.

16. ADNER

Breast tumor found by Bedford Hills physician November 26, 1974. Referred to gynecologist and seen December 5, 1974. Gynecologist referred her for surgery. Appointment made at one outside hospital for biopsy December 31, 1974. By January 27, 1975, not yet seen. Appointment made for admission to another hospital on February 19, 1975. The appointment was later changed to March 4, 1975 and the biopsy done on March 5th.

17. CUTSHAW

On May 1, 1975, referred by Bedford Hills physician to Grasslands Hospital Cardiac and Neurology Clinics. May 16, 1975, seen in general clinic at Grasslands. May 18th to June 4, 1975 admitted to Grasslands for gastritis and ^{H70}bradycardia. Given appointment to Cardiac Clinic for July 11, 1975 when discharged from the hospital. Was in sick wing at Bedford with chest pain July 2nd - July 6th, and July 11th - July 12th. No Cardiac Clinic visit evident from the record as reviewed through October 6, 1975.

18. DIAZ

Admitted to Bedford Hills October 18, ^{19 H7W}1973. Said on admission that she had chronic kidney disease and was under treatment at Bellevue Hospital (N.Y.) Clinic. From January 3, 1974 until February, 1975, she was allowed to attend the Bellevue Clinic every three months. On February 5, 1974, the medical director Dr. Knoes wrote to her physician at Bellevue, Dr. ^{H7W}Schacht, denying Dr. Schacht's requests to see her every two weeks. Dr. Knoes stated to Dr. Schacht that the facilities at Bedford were "fully equipped

19. FRANKLIN
September 27, 1974, seen by staff M.D. for urinary problem. Told to return in three weeks. Next saw him November 2, 1974.
20. HERBERT
January 16, 1975 and February 2, 1975 seen by Bedford Hills physician for a rapidly growing nodule on nose. February 14, 1975, Bedford Hills physician recommended plastic surgery consultation. No record of any such consultation.
21. HOLCOMB
April 14, 1974 see by Bedford Hills physician for pelvic infection and recommended gynecologist appointment in two weeks. May 8, 1975 (3 weeks later), given gynecologist appointment which was cancelled because of period. Finally saw gynecologist on May 23, 1975.
22. JAMES
Skin consultation ordered for rash June 2, 1975; done August 15, 1975.
23. JACKSON
February 12, 1974, burning on urination. May 20, 1974, frequent urination. August 19, 1974, first urine analysis sent.
24. LaVORE
February 28, 1974, began treatment by Bedford Hills physician for back injury (bed rest and medications). Continued with pain until May 2, 1974, when she was referred to hospital with cervical traction and collar.

25. LEE

- a. April 23, 1975 told nurse of urological problem. Nurse unable to pass catheter. May 4, 1975, urinary problem and back pain. Seen by M.D. May 13, 1975.
- b. June 27, 1975 referred to gynecologist by Bedford Hills general physician for vaginal discharge. August 8⁵, 1975, seen by Bedford Hills general physician and given flagyl without examination. August 18, 1975 seen by another Bedford Hills general physician, given mycostatin suppository and examination. September 2, 1975, Dr. Williams notes complaint of vaginal discharge, "Plan: Observe". September 11th, seen by Dr. Saadat - no discharge.

26. PALMER

- a. September 13, 1974, Bedford Hills general physician recommended gynecology visit. November 17, 1974, saw gynecologist at her own request.
- b. Requested gynecologist for vaginal infection July 7, 1975. Seen by general M.D. August 13, and August 28, 1975, not by gynecologist.

27. REED

July 24, 197⁴~~8~~, gynecologist admitted her to sick ward for Bartholins abscess. July 29, 197~~8~~, next gynecologist exam. Sent out to hospital for surgery on abscess.

28. VASQUEZ

- a. October 16, 1974, requested to be seen by M.D. for easy bruising. November 4, 1974, seen by M.D.
- b. September 30, 1974, seen by gynecologist, given appointment for three weeks. Next seen November 27, 1974, and was given appointment for two weeks. Next seen December 12, 1974.

29. WRENN

Seen by gynecologist September 12, 1974, for myomatous uterus and urinary symptoms. Given appointment for two weeks. Next saw gynecologist August 18, 197~~5~~.

30. CAPPELLA

February 4, 1975, Nurse recorded symptoms of stomach pains "which she feels is due to her loop. She would like loop removed." No gynecologist appointment evident in record as reviewed through March 5, 1975.

31. FOGGIE

Bedford Hills physician visits June 14, 1975, July 26, 1975, August 29, 1975, and September 2, 1975 for painful swelling in upper abdomen. Some felt "mass"; some rectus diastasis (gap in muscles) with herniation of bowel. On September 3, 1975, note by Bedford Hills physician states "Surgical consult at present would be for elective surgery only. This patient has never had any evident of acute abdomen." No consult as of September 23.

32. PIZARRO

Patient was seen for varicose veins by the physician on February 4, 1974, and did not want surgery at that time. On June 27, 1975, she told the nurse she wished surgery. On September 9, 1975, the physician examined her and recommended surgical consultation. On September 30th another physician also recommended surgical consultation. No consultation evident as of October 6, 1975.

33. BENTON

Erythromycin, an antibiotic, was prescribed for a throat infection February 13, 1975. On February 16, 1975, patient informed the nurse she had stop taking the medicine because of nausea. On February 27th, nurse noted she was still having pain and swelling of the throat. No physician visit until after her next routine throat culture March 10, 1975.

34. VEGA

Multiple cuts with severe blood loss January 9, 1975, with a documented delay of at least 45 minutes between the injury and her arrival in Emergency Room.

35. RIVERA, Candida

Patient had a head injury with loss of consciousness on August 29, 1974, and was not seen by a physician until September 6, 1974.

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II. ADMISSION HEALTH SCREENING SUBSTANTIALLY DELAYED

1. LEE
Admitted April 23, 1975. Admission physical examination May 20, 1975. History of urinary tract surgery and inability to catheterize.
2. DOBSON
Admitted April 19, 1974. Physical September 23, 1974. On admission, patient gave history of past pneumonia, syphilis, and thyroid disease. She had her complete physical only after requesting a medical leave to get a physical.
3. CAPPELLA
Admitted December 11, 1973. Physical January 29, 1974. Complaints of dizzy spells, breast pain, shortness of breath. Received psychiatric medications before physical. Had a brief examination December 21, 1973 after the medication was initially prescribed.
4. DURANTE
Admitted July 31, 1974, physical September 27, 1974. Patient had psychiatric medications prescribed before admission physical.

5. LaVORE
Admitted December 11, 1973. Physical February 26, 1974. Patient had psychiatric medications prescribed before admission physical.
6. BLACKSTOCK
Admitted July 16, 1974. Physical November 22, 1974. History of urinary infection on admission, first urinalysis September 27, 1974.
7. BROWN
Admitted July 25, 1974. Physical November 27, 1974.
8. CRUZ
Admitted June 25, 1974. Physical December 9, 1974.
9. HOLCOMB
Admitted January 2, 1975. Physical March 10, 1975.
10. JAMES
Admitted May 8, 1975. Physical June 2, 1975.
11. MAINS
Admitted April 21, 1975. Physical May 28, 1975.
12. LEWIN
Admitted May 11, 1974. Physical November 26, 1974.
13. RIVERA, Candida
Admitted April 16, 1974. Physical November 27, 1974

14. RIVERA, Miriam Admitted April 19, 1974. Physical May 6, 1974. Patient had given a history of asthma on admission.
15. ROMAIN Admitted December 26, 1973. Physical March 6, 1974.
16. WAITE Admitted March 20, 1974. Physical May 6, 1974.
17. WHEAT Admitted April 13, 1974. Physical May 14, 1974.
18. WRENN Admitted June 26, 1974. Seen by gynecologist August 21, 1974, physical September 24, 1974. Patient had given a history of pelvic tumor and gall bladder disease on admission.
19. KERR Admitted July 16, 1975. Physical November 27, 1975. Patient gave history of diabetes and was on insulin.

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III. DIAGNOSTIC WORK ORDERED BY PHYSICIAN
AND NOT DONE OR SUBSTANTIALLY DELAYED

1. STRONG
Chest and rib X-rays ordered July 8, 1975, reordered July 13, app. not done as of October 3rd because re-ordered October 3rd.
2. PIZARRO
 - a. Epilepsy. Neurologic consultation and brain scan ordered June 30, 1975. Brain scan done September 16, 1975, neurologic consultation not in record.
 - b. Blood pressure ordered twice a week for 30 days on February 21, 1975. Done February 25th, March 17th.

Blood pressure reordered twice a week for 30 days on March 19, 1975. Done July 20th, September 15th.
3. JACKSON
Blood pressures ordered weekly April 24, 1975. Next recorded blood pressure July 26, 1975.
4. CHACON
 - a. Blood pressure ordered twice a week for 30 days on May 19, 1975. Done May 27th June 13th, July 29th, August 12th.
 - b. Blood count ordered June 21, 1975 not recorded as of September 24, 1975.
5. NARGANES
 - a. Thyroid tests ordered December 24, 1974, re-ordered August 6, 1975, drawn August 12, 1975.
 - b. Blood pressures ordered twice a week for 2 weeks January 30, 1975. Done February 19th, August 6th.

6. LOZADA
E.E.G. ordered August 14, 1975. Re-ordered September 3, 1975 and September 22, 1975, Apparently not done as of October 7, 1975.
7. NEAL
Skull X-ray and brain scan ordered July 22, 1975. Apparently not done as of October 7, 1975.
8. CRUMPLER
Epilepsy. June 30, 1975 Brain scan and neurological consultation ordered. Neurological consultation done August 7, 1975. Brain scan appointment not done as of October 4, 1975.
9. SMITHERS
Seizures. E.E.G. ordered April 21, 1975, June 23, 1975, and September 16, 1975, not done as of December 31, 1975.
10. DOBSON
Chronic cough and on tuberculosis medication. Chest X-ray ordered April 22, 1974. Bedford Hills physician noted no result in chart August 13, 1974, and reordered.

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11. BLACKSTOCK

- a. Blood count ordered August 13, 1974, order not picked up until September 6th, done September 27th.
- b. Patient treated for bladder infection May 13, 1975, ordered for follow up urine 24 days, not done.

12. MORELAND

Gall bladder series ordered June 20, 1975, apparently not done as of September 25, 1975.

13. GALLOWAY

August 18, 1975 E.E.G. ordered, not apparently done as of December 29, 1975.

14. BOOKER

Treated for bladder infection March 26, 1975. Follow up urine culture ordered for 30 days - apparently not done.

15. MANN

Brain scan ordered July 10, 1975 apparently not done as of September 19, 1975.

16. POWELL

February 17, 1975 cytology (evaluation of cells for cancer) of drainage from nipple sent, never apparently returned.

17. DIEPPA

On March 11, 1975 gynecologist ordered repeat blood test for syphilis in one month - done June 4, 1975. June 9, 1975 ordered repeat blood test for syphilis in one month, apparently not done.

18. FRANKLIN

Bladder problem, urine culture sent December 10, 1974. Bedford Hills physician noted result not available December 26th.

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IV. DIAGNOSTIC TESTS - ABNORMAL RESULTS NOT
FOLLOWED UP OR LONG DELAY

1. REED
Peptic Ulcer symptoms. Stool test for blood ordered December 11, 1974. Submitted by patient December 12, 13, 16, 1974.
Positive results returned December 21, 1974, next seen by doctor January 27, 1975.
2. DOBSON
April 19, 1974 positive blood test for syphilis noted by M.D. September, 1974.
3. LAVORE
December 13, 1973 had positive blood test for syphilis. May, 1975^{ms} had spinal tap in hospital to rule out syphilis of the central nervous system - result not in record. No record of treatment.
4. WHEAT
 - a. April 16, 1974 had two positive blood tests for syphilis. Noted by M.D. May 14, 1974. Repeated August 12, 1974 one negative, the other (the definitive test) not in record.
 - b. April 16, 1974 had two abnormal liver tests. Patient wrote to Dr. Loudon July 16, 1974 saying Bedford Hills physician told her she needed a liver scan. Patient received a letter from Bedford Hills Superintendent July 29, 1974 saying she would get a liver scan in future. August 2, 1974, seen by Bedford Hills physician who repeated liver tests (normal second time).

5. DIAZ

October 30, 1975^{3 HW} Pap test showed severe inflammation. Seen by gynecologist and treated March 21, 1975.

6. BOOKER

- a. August 15, 1974 Abnormal thyroid test not followed up.
- b. May 28, 1974 Abnormal Pap. Repeated April 7, 1975.

7. LOZADO

January 25, 1974 Pap test returned Class 2. Noted March 24, 1975 (despite several gynecologist visits) and treated with vaginal cream.

8. BROWN

- a. September 27, 1974 Pus found in urine. October 11th Bedford Hills physician ordered urine culture. October 15th culture obtained showing infection. November 1, Bedford Hills physician prescribed antibiotic treatment.
- b. July 31, 1974 Pap test showed Trichomonas infection. No treatment prescribed before, or after routine gynecologic exam December 9, 1974.

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9. RUSSELL November 12, 1974 abnormal Pap test showing inflammation and Trichomonas infection. No treatment in record as reviewed through April, 1975
10. ROMAIN Abnormal Pap test December 26, 1973, showing inflammation and Trichomonas infection. Repeated March 6, 1974, same result. First visit to gynecologist August 12, 1974. Treatment for infection began August 15, 1974.
11. DURANTE
- a. Uterine bleeding. Blood count drawn August 15, 1975 to determine whether losing too much blood. Reviewed September 22, 1975.
 - b. Abnormal Pap September 27, 1974; October 18, 1974; June 13, 1975; June 26, 1975, repeated but not treated.
12. PALMER Abnormal Pap September, 1974; treated November, 1974.
13. STRONG July 9, 1975 blood test showed anemia; noted and treatment begun September 5, 1975.
14. LEE Bladder problem. Urine culture ordered June 7, 1975. Patient returned to M.D. because of severe pain June 14, 1975, results not back.
15. FRANKLIN Abnormal thyroid test January 9, 1975 not noted.
16. BOSTICK Abnormal thyroid and liver tests January 7, 1975. January 10, 1975 note by lab technician - "to be referred to Dr. Williams for abnormal lab tests." Not done.

17. VASQUEZ

Abnormal liver tests, and pus in urine, obtained September 13, 1974. Bedford Hills physician notified by nurse. Patient was not seen by a physician for this problem until November 4, 1974 when she reported bruising and past history of liver disease.

18. GONZALEZ

May 9, 1975 admitting blood work showed elevated PBI and T4 (thyroid tests), recorded by lab technician in chart, not noted in any subsequent M.D. notes.

19. FOGGIE

Positive gonorrhea antibody test May 10, 1975; no follow up.

20. DIEPPA

- a. March 8, 1975, abnormal liver test noted by lab technician but not followed up.
- b. March 11, 1975, pap test showed trichomonas infection, not followed up.
- c. September 11, 1975, abnormal triglycerides noted by lab technician and not followed up.

21. WRENN

July 9, 1975, four abnormal blood chemistries not followed up.

22. PIZARRO

July 20, 1973, abnormal blood and urine tests. Repeated November 16, 1973. Urine stayed abnormal - not followed up.

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V. MEDICATIONS AND THERAPEUTIC AIDS NOT GIVEN AS ORDERED OR UNDUE DELAY

1. REED
 - a. Douches ordered 3 to 5 times a week by gynecologist 10/29/73, given from 12/4/73 to 12/27/73.
 - b. Special shoes ordered by BH physician 5/10/74, fitted 6/24/74, arrived 7/17/74 but sent back for improper fit, not yet back by 10/2/74.
2. PIZARRO

Stockings for varicose veins ordered 2/4/74, not received as of 10/6/75.
3. POWELL

Over 30 day interval re standing medication: Dilantin and Phenobarbital 2/26/75 - 4/7/75 - 6/24/75
4. ARNER

Over 30 day interval re standing medication: Dilantin 4/2/75 - 5/23/75, 6/9/75 - 7/14/75
5. FOGGIE

Over 30 day interval in standing medication orders: Mylanta 5/6/75 - 6/12/75, 8/12/75 - 9/17/75 Dilantin 5/30/75 - 7/14/75, 8/7/75 - 9/18/75
6. SMITHERS

Over 30 day interval in standing medication orders: Dilantin 7/9/75 - 8/19 Phenobarbital 7/8/75 - 8/19 Mysoline ordered 7/9/75 for 7 days then 9/3
7. JACKSON

Over 30 day interval in standing medication orders: Diuril 4/24/75 stopped without re-exam (Hydrodiuril begun 8/15/75)
8. MORELAND

Given iron for anemia on discharge from Grasslands Hospital 3/2/75. On 4/7/75 was seen in Grasslands clinic and iron again recommended. On 6/8/75 a nurse note, "Still taking iron intermittently". Seen for dizziness 6/8, 6/19, 6/20. Iron ordered for 30 days 8/7.
9. WRENN

Reported she needed glasses but broke them before coming to Bedford 6/26/74, vision checked first 10/21/74.

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VI. IMPORTANT PAST MEDICAL RECORDS NOT REQUESTED, OR BEDFORD HILLS
RECORDS NOT SENT OUT, AS NEEDED

A84

1. BOOKER
 - a. No report in chart from Grasslands Hospital after hysterectomy 7/7/73. M.D. note 7/25/73 says, "apparently had a hysterectomy."
 - b. No official report in record on skin tumor removed at Grasslands 9/73.
2. DOBSON

Past history of pneumonia, on medications for tuberculosis. Records prior to incarceration not requested.
3. WRENN

On 9/17/75, Bedford physician found her to be anemic and on 10/3/75 began iron. She was sent to an outside gynecologist on 10/2/75 to be evaluated for fibroid uterus with bleeding. On 10/7/75 the outside gynecologist reported "no need for surgery at this time, blood count O.K."
4. STRAYHORN

Keloid of ear lobes. Records prior to incarceration not requested.
5. PIZARRO

Seizures. Records prior to incarceration not requested.
6. GALLOWAY

Head injury and seizures. Records prior to incarceration not requested.
7. ARNER

Seizures. Records prior to incarceration not requested.
8. BLACKSTOCK

Urinary and tubal infection treated at Rikers Island. Records not requested.
9. NEAL

Seizures. Records prior to incarceration not requested.
10. SMITHERS

Seizures. Records prior to incarceration not requested.
11. PLAIR

No official summary from hospitalization at Northern Westchester Medical Center in 4/74 for diarrhea.

VII. MEDICATIONS PRESCRIBED WHICH MIGHT BE HARMFUL IN VIEW OF
PATIENT'S OTHER ILLNESSES - RECORD KEEPING PROBLEM

1. HAPEMAN

In presence of glaucoma, Elavil given
4/28/75, Ornade given 7/2/75.

2. REED

In presence of peptic ulcer symptoms
for which she was receiving tests, was
given sodium salicylate 2/6/75.

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VIII. LACK OF PLAN OR PROTOCOL FOR CHRONIC ILLNESSES

ADVERSELY AFFECTING PATIENT CARE - RECORD KEEPING PROBLEM

HYPERTENSION: JACKSON, DIEPPA, PIZARRO, CHACON, GALLOWAY

CHRONIC LUNG DISEASE OR ASTHMA: ARRUFAT, BOSTICK, DIAZ

CHEST PAIN: DOBSON, CUTSHAW

POSSIBLE TUBERCULOSIS: DOBSON, NEAL

HISTORY OF BLEEDING FROM STOMACH OR BOWEL: STRAYHORN, PINEDA, REED

BACK PAIN: LaVORE, REED, JACKSON, CAPPELLA

SYPHILIS: DOBSON, NEAL

18.

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IX. WORK ASSIGNMENT NOT SUITABLE FOR PATIENT'S MEDICAL PROBLEM

1. DURANTE

Had hernia operation 2/7/75. On 4/3/75 returned to Bedford and was assigned regular work. On 4/12/75 patient wrote to BH physician requesting to be relieved from heavy lifting (cafeteria assignment), permission denied. On 4/30/75 saw another BH physician who approved change in work assignment.

2. ARRUFAT

Swelling of left arm due to phlebitis under treatment at Bedford Hills. Physician advised her to elevate the arm when it swelled 1/25/74 at Bedford, 2/26/74 at Vascular Clinic, Grasslands Hospital. 2/13/75 nurse noted "Elevates hand as often as possible but requires both hands for work." No record of change in work assignment.

3. BOSTICK

Had chronic skin rash of hands. On 1/23/75 BH physician suggested she might be allergic to chemicals on cloth she was working with (sewing). On 3/24/74 gloves were prescribed for her while at work.

4. MAINS

Cut finger on meat slicer in cafeteria 5/26/75. Told to keep it elevated and continued to do cafeteria work. Swelling of finger noted 5/27/75, 6/23/75, and 7/29/75. On 7/29/75 pt. reassigned to corridor cleaning.

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X. CORRECTIONAL PROCEDURES INTERFERING WITH MEDICAL CARE

1. ARNER

Treated for bladder infection 1/23/75 and ordered to have repeat urine culture in 2-3 weeks. On 2/3 while in segregation began to have urinary discomfort. Nurses note states "Due repeat cath urine. In punishment lock. Will try for clean catch." Physician prescribed a pain medication and ordered "Follow up with urine c/s when possible, i.e. 3 days p (2)" [(2 is medication)]. On 2/15 patient refused the medication because it stained her clothes. No urine result in chart until 4/6/75.

2. VEGA

- a. Locked in sick wing observation room 1/19/75 after receiving an injection of Demerol and 44 sutures for cuts on face and body. Fell in her room after becoming dizzy while trying to go to toilet.
- b. While in segregation 2/8/75 had asthma attack after another prisoner set her seg. room on fire. Nurses note states "Valium given to help allay excitement throughout corridor."
- c. 3/15/75 seen by nurse with abdominal pain and vomiting. Nurses note states, "She was admitted to H1 as routinely done but officer said she was to be admitted to H2 per Lt. Steinhilber. I checked with her telling why she should be on H1 - to be observed more closely for symptoms. Lieut. said her buddy ~~Santra Vega~~ is on H1."

3. SMITHERS

Locked in sick wing observation room for seizures 4/28/75. Another prisoner states there was a 45 minute delay between time pt began calling for help and arrival of corrections officer 4/29/75 (10:20 - 11:05 P.M.). Nurses note regarding seizure written at 1:00 A.M. 4/30.

4. RUSSELL

2/8/75 4:36 P.M. while in segregation. scratched her wrists with a pin. "Officer *Vedrine* told me J.R. did this hoping she would be sent to H₁ where *Leslie Crute* (her friend) was sent...5:35 J.R. now set fire to her room. 5:45 P.M. Dr. Williams responded to call and advised suicidal precautions same as in observ. Rm. Search and strip room, make sure no items remain to cause any injury. Take away blankets, bedding. Give paper - plastic cutlery. [Written between lines - mattress on floor, allowed paper gowns, tear proof blanket]. Later on rounds J.R. had a different attitude about self...just wanted her nerve Rx. Elavil was given later. She remarked about the stripped room and fresh air to aerate lungs saying, 'Now you want me to get pneumonia.' Observe." Next nurse note 2/13/75.